



RFP Number **WS1309295057**

Electronic Transponder Logistics and Inventory Managed Services Contract

Roads and Maritime Services

ABN 76 236 371 088

and

E-Bisglobal Pty Ltd

ABN 52 092 725 570

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THIS DEED is made on2018

BETWEEN:

1. Roads and Maritime Services ABN 76 236 371 088 of 20-44 Ennis Road, Milsons Point , NSW 2061 ("RMS"); and
2. E-Bisglobal Pty Ltd ABN 52 092 725 570 whose registered office is at 7 Reliance Drive, Tuggerah NSW 2259 ("Service Provider").

RECITAL:

RMS wishes to engage the Service Provider, and the Service Provider accepts that engagement, to perform the Services subject to, and in accordance with, the Contract.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

"Approval" means any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Authority or under any other applicable Law, which must be obtained or satisfied to carry out the Services.

"Associated Products" means items referred to as Associated Products in the Statement of Requirements and other items as may be notified to the Service Provider by the RMS Contract Manager from time to time.

"Authority" means any Commonwealth, State or Local government department, body or Instrumentality or any other authority, statutory body or person (whether autonomous or not) who is charged with the administration of a Law which has jurisdiction over the Services.

"Business Day" means a day on which banks are generally open for business in Sydney, excluding Saturday, Sunday and public holidays in Sydney.

"Claim" means any claim or action which the Service Provider may make or bring against RMS:

- (a) under, arising out of, or in connection with, the invitation to tender, any negotiations had or representations made prior to the date of the Contract, the Service Provider's Tender or the Contract;
- (b) arising out of, or in connection with, the Services; or
- (c) otherwise at Law or in equity including:
 - (i) by statute;

- (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
- (iii) for restitution for unjust enrichment,

in respect of any fact, matter or thing under, arising out of or in connection with the Services or the Contract.

"Client Order" means the orders as described in the Statement of Requirements, which covers:

- (i) Direct Fulfilment Orders;
- (ii) SNSW Fulfilment Orders; and
- (iii) Business Partner Fulfilment Orders.

"Client Order Fees" mean all fees described in the table titled "Pricing Schedule" in Schedule 2, as adjusted in accordance with the Contract.

"Confidential Information" means all information that:

- (a) is made available by or on behalf of RMS to the Service Provider, or is otherwise obtained by or on behalf of the Service Provider; and
- (b) is by its nature confidential or the Service Provider knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of the Contract.

Confidential Information includes:

- (a) information concerning the existence and terms of the Contract;
- (b) information that is Personal Information.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the Service Provider or any of its subcontractors, officers, employees or agents;
- (b) is or was made available to the Service Provider by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the Service Provider independently of the disclosing party and any of its officers, employees or agents.

"Contract" means this document and all schedules to this document.

"Contract Management Group" means the group referred to in clause 7.

"Contract Material" means any Material used or produced (whether before, on or after the date of the Contract) under or for the purposes of or in connection with the

Contract or the Services, including service manuals, as-built drawings, certificates, minutes of meetings, diary notes, all accounting records, audio material, visual material, audio visual material and any other material of a similar nature to those materials and includes the Data and the Contract Personal Information.

"Contract Particulars" means the particulars set out in Schedule 1.

"Contract Personal Information" means Personal Information to which the Service Provider, or any third party engaged by the Service Provider, has access directly or indirectly in connection with the Contract, including the Personal Information of any RMS personnel or RMS customers.

"Controller" has the same meaning as in the *Corporations Act 2001* (Cth).

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

"CPI" means the consumer price index identified in Part C (CPI Adjustment) of Schedule 2 (Pricing).

"CPI Adjustment" has the meaning provided in clause 32.16.

"CPI Date" has the meaning provided in Part C (CPI Adjustment) of Schedule 2 (Pricing).

"Data" means all hard copy and electronic data and expressions of data relating to the Contract, including all data and expressions of data:

- (a) resulting from or in respect of transactions generated or processed by the System;
- (b) contained in all invoices contained in or processed or generated by the System; and
- (c) comprising reports generated by the System.

"Data Breach" means any event that has the potential to, or actually does, impair or compromise in any manner the confidentiality, reliability, integrity, value and/or assurance of the Data.

"Disaster Recovery and Business Continuity Plan" means the Management Plan of that name developed in accordance with the Contract.

"Dispute Representatives" means, in respect of a party, those persons referred to in the Contract Particulars.

"Excepted Risk" means:

- (a) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, act of terrorism or military or usurped power or martial law or confiscation by order of any Government or public authority or industrial dispute;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel not caused by the Service Provider; or

- (c) the negligent or wilful act or omission of RMS, the RMS Contract Manager or any agent, employee or subcontractor of RMS (other than the Service Provider), not being an act or omission expressly permitted or allowed under this document.

"Financial Difficulty" means any one of the following:

- (a) the Service Provider becomes, is declared to be, is taken under any applicable law to be, admits to or informs RMS in writing or its creditors generally that the Service Provider is insolvent, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against the Service Provider by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Service Provider;
- (d) where the Service Provider is a corporation, any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a Controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (v) a winding up order is made in respect of the corporation;
 - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the corporation takes possession of that property;
- (e) RMS (acting reasonably) considers that the Service Provider cannot trade profitably under the Contract and this could have an adverse effect on the performance of the Services;
- (f) the Service Provider is persistently failing to pay subcontractors within 30 days of receiving an invoice from the subcontractor (unless the Service Provider has before the end of the 30 day period notified the subcontractor of a genuine dispute or difference it has about the invoice); or
- (g) a change in shareholding or a change in corporate structure which:
 - (i) is not approved in accordance with clause 32.2(a) or notified in accordance with clause 32.2(c); or

- (ii) although approved in accordance with clause 32.2(a) or notified in accordance with clause 32.2(c), has an adverse effect on the performance of the Services.

"First Further Term" has the meaning given in clause 2.2.

"Full Service Commencement Date" means the date set out in the Contract Particulars.

"Goods" means goods, materials, spare parts, plant, equipment and consumables which have been supplied by the Service Provider in the course of performing Services in accordance with the Contract.

"Government Information" means:

- (a) information that relates directly to the performance of the Service Provider's obligations under the Contract;
- (b) information collected by the Service Provider from members of the public to whom it provides, or offers to provide, the Services; and
- (c) information received by the Service Provider from RMS to enable it to provide the Services.

Government Information does not include:

- (d) information that discloses or would tend to disclose the Service Provider's financing arrangements, financial modelling, cost structure or profit margins;
- (e) information that the Service Provider is prohibited from disclosing to RMS by provision made by or under any Act (of any State, or the Commonwealth); or
- (f) information that, if disclosed, could reasonably be expected to place the Service Provider at a substantial commercial disadvantage in relation to RMS, whether at present or in the future.

"Incoming Service Provider" means the service provider which RMS engages to carry out the Services upon expiry of the Term (or tenderers for that role) or an Authority.

"Infringement Claim" means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting the Service Provider's ownership of the Intellectual Property Rights in the Contract Material, the Service Provider's Material or the System; or
- (b) that the supply or other use of the Services, the Contract Material, the Service Provider's Material or the System infringes or may infringe the Intellectual Property Rights of a third party.

"Initial Term" has the meaning given in clause 2.1.

"Intellectual Property Rights" means all present and future Intellectual property rights including in respect of inventions, innovations, patents, utility models,

designs, circuit layouts, mask rights, copyright, confidential information, trade secrets, know-how, trade marks, business and domain names and all other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable that exist or that may come to exist anywhere in the world. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights.

"Inventory" refers to any and all products, equipment or other material or article that is owned by, or has been acquired on behalf of, RMS for use under this Contract that is being held by the Supplier for the purpose of this Contract.

"Key People" means the key people referred to in clause 5.2(a), including the representatives referred to in clause 5.1, as replaced in accordance with clause 5.2(c).

"Law" includes:

- (a) any law applicable to the carrying out of the Service Provider's activities, including acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any condition or requirement under them); and
- (c) all policies, plans, manuals, guidelines, instructions, directions (including directions from the NSW Procurement Board), codes of practice and other governmental (whether Commonwealth, State or local) requirements (including of Authorities) which are or may become applicable to RMS or the Services.

"Management Plan" means the Service Provider's:

- (a) Manual;
- (b) Transition In Plan;
- (c) Transition Out Plan;
- (d) Disaster Recovery and Business Continuity Plan;
- (e) SME Participation Plan;
- (f) Quality Management Plan; and
- (g) Risk Management Plan.

"Manual" means the operations manual referred to in Schedule 8;

"Material" means advice, data, information, documents and other material in whatever form, including in the nature of reports, plans, budgets, programs, software, databases or other information stored in any medium, including electronic,

technical information, drawings, specifications, charts, surveys, calculations, tables and schedules.

"Moral Right" means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; and/or
- (d) a right of a similar nature,

which is conferred by statute, and which exists or comes to exist anywhere in the world, in relation to a copyright work or other subject matter.

"Other Service Providers" means any service provider, professional service subcontractor, tradesperson or other person (including any government agency) engaged by RMS to perform work or services of any description in any way in connection with the Services other than the Service Provider or any of its subcontractors.

"PAV Date" is defined in Part B (Pre Agreed Variation) of Schedule 2 (Pricing).

"PAV Rate" means the rate described in Part B (Pre Agreed Variation) of Schedule 2 (Pricing).

"Personal Information" has the meaning given in the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW).

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

"PPS Register" means the Personal Property Securities Register established under the PPS Act.

"Pre Agreed Variation" means the pre agreed variation described in Part B (Pre Agreed Variation) of Schedule 2 (Pricing).

"Privacy Laws" means the *Privacy and Personal Information Protection Act 1998* (NSW) (including the Information Privacy Principles in the *Privacy and Personal Information Protection Act 1998*), the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

"Proportionate Liability Legislation" means:

- (a) *Civil Liability Act 2002* (NSW) - Part 4;
- (b) *Competition and Consumer Act 2010* (Cth) - Part VIA;
- (c) *Corporations Act 2001* (Cth) - Part 7.10, Div 2A; and
- (d) *Australian Securities & Investments Commission Act 2001* (Cth) - Part 2, Division 2, Subdivision GA.

"Quality Management Plan" means the Management Plan of that name developed in accordance with the Contract.

"Rebate" has the meaning given in Schedule 5

"Records" has the same meaning as the term "record" in the *Government Information (Public Access) Act 2009* (NSW).

"Reimbursable Costs" means:

- (a) the actual cost as invoiced to the Service Provider for the purchase of Associated Products as contemplated in Statement of Requirements;
- (b) the Service Provider's actual cost of freight for the initial transportation of the relevant Associated Products into the relevant Service Location.

"Reports" means the reports required under the Contract including as stipulated in Schedule 9

"Risk Management Plan" means the Management Plan of that name developed in accordance with the Contract.

"RMS' Material" means all Material provided by or on behalf of RMS to the Service Provider for the purposes of the Contract, and all adaptations, enhancements and derivative works of such Material, including:

- (a) the layout, format and other characteristics of the reports (including the Reports) to be generated by the Service Provider under the Contract; and
- (b) any processes, materials, know how, knowledge, ideas and concepts relating to the Services.

"RMS Contract Manager" means the person named in the Contract Particulars as the RMS Contract Manager or such other person from time to time appointed in writing by RMS under clause 4.2.

"Second Further Term" has the meaning given in clause 2.3.

"Security Weakness" means a flaw or vulnerability of any kind in the security controls or other measures used to protect the Data.

"Service Level Indicators" means the service level indicators set out in the table in Schedule 5 for evaluating the performance of the Service Provider under the Contract, as may be adjusted under the Contract.

"Service Locations" means the warehouses and other facilities provided or used by the Service Provider for the purpose of carrying out any part of the Services.

"Service Provider's Material" means any Material independently created by or on behalf of the Service Provider other than for RMS before the date of the Contract, and includes the Service Provider's background or underlying processes, methodologies and tool-kits.

"Service Provider's Representative" means the person identified as the "Service Provider's Representative" in Schedule 4

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"Services" means the services described in, or reasonably inferred from, the Statement of Requirements, as may be varied under the Contract, and includes the Transition In Services and the Transition Out Services.

"SME Participation Plan" means the Management Plan of that name developed in accordance with the Contract.

"Statement of Requirements" means the document set out in Schedule 3 **Error! Reference source not found.**, as may be varied in accordance with the Contract.

"System" means the computer operating and related software systems described in the Statement of Requirements to be implemented by the Service Provider in accordance with the Statement of Requirements.

"Tender" means all information and documents submitted by the Service Provider to RMS in response to the request for proposals issued by RMS titled "Roads and Maritime Services, Request for Proposals, RMS WS1309295057" or any subsequent request issued by RMS arising out of or in connection with that request for proposals, the documents listed in the Contract Particulars, and all promises and representations made in negotiations between the Service Provider and RMS prior to the date of the Contract.

"Term" means:

- (a) the Initial Term;
- (b) if RMS notifies the Service Provider under clause 2.2 that RMS is exercising its option to extend the Initial Term, the First Further Term; and
- (c) if RMS notifies the Service Provider under clause 2.3 that RMS is exercising its option to extend the First Further Term, the Second Further Term.

"Transition In Period" means the period commencing on the date of the Contract and ending on the Full Service Commencement Date.

"Transition In Plan" means the Management Plan of that name developed in accordance with the Contract.

"Transition In Services" means the services and other activities described in the section of the Statement of Requirements titled "Transition In Services".

"Transition Out Period" means:

- (a) the period comprising the final 60 days of the Term; and
- (b) if a notice of termination is issued under clause 28.6, the period commencing on the date of the notice and ending on the date of termination of the Contract.

"Transition Out Plan" means the Management Plan of that name developed in accordance with the Contract.

"Transition Out Services" means the services and other activities described in clause 29.3 of the Contract.

"Variation" means a change in the Services including any additions or Increases to, decreases in, or omissions from the Services.

"Warehouse Manager" means the person named as the "Warehouse Manager" in Schedule 4, as may be replaced from time to time in accordance with the Contract.

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

"WHS Regulation" means the *Work Health and Safety Regulation 2017* (NSW).

"Year" means a reference to each year, commencing on 1 July and ending on 30 June, of the Term.

1.2 Rules for interpreting the Contract

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Contract, 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 (including this Contract) or agreement, or a provision of a document (including this Contract) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a published government policy are deemed to include references to that government policy as amended, supplemented, varied or replaced from time to time;
 - (iv) a party to this Contract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (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 or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) References to clauses or paragraphs are references to clauses or paragraphs of the Contract.

- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing and the words "including" and "includes" will be respectively read to mean "including, without limitation," and "includes, without limitation".
- (g) A reference to a subcontractor includes professional service subcontractors, suppliers and any other persons engaged by the Service Provider (other than employees).
- (h) 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.
- (i) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (j) The expression the Contract includes the agreement, arrangement, understanding or transaction recorded in the Contract.
- (k) The expressions subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
- (l) A reference to dollars or \$ is to an amount in Australian currency.
- (m) References to "day" mean "calendar day", except where the last day for the giving of any notice or doing of any other thing under the Contract falls on a day other than a business day, in which case the last day for the giving of any notice or doing any other thing will be the next business day.
- (n) References to "business day" mean a day other than 27, 28, 29, 30 or 31 December or a Saturday, Sunday or public holiday in Sydney.

1.3 Multiple parties

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

- (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) a representation, warranty or undertaking relates to each of them separately.

1.4 The rule about "contra proferentem"

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

2. TERM

2.1 Initial Term

The Initial Term commences on the date of the Contract and continues for 2 years after the Full Service Commencement Date ("**Initial Term**").

2.2 First Further Term

- (a) RMS may, in its absolute discretion, elect to extend the Initial Term for a period of 1 year by giving the Service Provider a notice at least 3 months before the expiry of the Initial Term in the form of Schedule 7.
- (b) If RMS gives a notice under clause 2.2(a), each party must continue to comply with its obligations during the extended Term ("**First Further Term**") on the same terms as set out in the Contract, except that there will be no further option under this clause 2.2 for RMS to extend the Term.

2.3 Second Further Term

- (a) RMS may, in its absolute discretion, elect to extend the First Further Term for a period of 1 year by giving the Service Provider a notice at least 3 months before the expiry of the First Further Term in the form of Schedule 7.
- (b) If RMS gives a notice under clause 2.3(a), each party must continue to comply with its obligations during the extended Term ("**Second Further Term**") on the same terms as set out in the Contract, except that there will be no further option under this clause 2.3 for RMS to extend the Term.

3. ROLES AND RESPONSIBILITIES

3.1 Service Provider

- (a) RMS engages the Service Provider to perform:
 - (i) the Transition In Services during the Transition In Period;
 - (ii) the Transition Out Services during the Transition Out Period; and
 - (iii) the remainder of the Services during the Term,and the Service Provider accepts that engagement.
- (b) The Service Provider must perform the Services in accordance with the Contract.

3.2 RMS

In consideration of the Service Provider performing the Services in accordance with the Contract, RMS will pay the Service Provider the:

- (a) Reimbursable Costs; plus
- (b) Client Order Fees; less
- (c) Rebates,

in accordance with the Contract and, in particular, clause 20.

3.3 Legal relationship

- (a) The Service Provider is an independent contractor of RMS.
- (b) Nothing in, or contemplated by, the Contract will be construed or interpreted as constituting a relationship of partnership, joint venturers, fiduciaries, employer and employee, principal and agent or any other fiduciary relationship between RMS and the Service Provider.

3.4 No restriction

The Contract does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions (including pursuant to any legislation) provided that this clause 3.4 does not limit the contractual obligations of RMS pursuant to the Contract.

4. RMS CONTRACT MANAGER

4.1 RMS Contract Manager

- (a) The RMS Contract Manager will act as the agent of RMS (and not as a certifier) in discharging each of the functions and exercising each of the rights of the RMS Contract Manager or RMS under the Contract.
- (b) The Service Provider must perform the Services in accordance with any directions of the RMS Contract Manager under the Contract or purported to be given under the Contract, including any Variation directed by the RMS Contract Manager by a "Variation Notice" under clause 0(b).
- (c) Any direction of the RMS Contract Manager under the Contract or purported to be given under the Contract may, unless the Contract expressly provides otherwise, be given either orally or in writing.
- (d) If a direction is initially given orally, the RMS Contract Manager must as soon as practicable confirm it by notice in writing to the Service Provider.

4.2 Replacement of RMS Contract Manager

- (a) RMS may at any time during the Term replace the RMS Contract Manager.
- (b) If this occurs or for any other reason the RMS Contract Manager ceases to act, RMS must:
 - (i) notify the Service Provider in writing;
 - (ii) appoint another person to be the RMS Contract Manager; and
 - (iii) notify the Service Provider in writing of the appointment under subparagraph (ii).

5. SERVICE PROVIDER'S REPRESENTATIVE AND KEY PEOPLE

5.1 Service Provider's Representative

The Service Provider's representative for the purposes of the Contract is the Service Provider's Representative.

5.2 Key People

Throughout the Term, the Service Provider must:

- (a) subject to paragraph (b), maintain the team of Key People nominated in Schedule 4 in the applicable job specified in Schedule 4;
- (b) not remove (either permanently or temporarily) any Key People from the Services unless:
 - (i) the RMS Contract Manager approves any replacement, which approval:
 - (A) must, where practicable, be sought no later than 30 days before the proposed replacement; and
 - (B) may be subject to such reasonable conditions as RMS may (in its absolute discretion) impose, including that the Service Provider demonstrate to the satisfaction of the RMS Contract Manager that the replacement person has the skill, expertise, qualifications and experience sufficient to professionally and competently discharge the functions being performed by the person proposed to be replaced;
 - (ii) an instruction is given by the RMS Contract Manager under clause 6.4;
 - (iii) that person dies, retires or resigns (other than to accept other employment with the Service Provider or any Related Body

Corporate of the Service Provider) or otherwise suffers from ill health; or

- (iv) that person's section of the Services has been completed; and
- (c) promptly fill any vacancy of Key People under paragraph (b)(ii) or (iii) with a person who:
 - (i) fulfils the criteria for the job specification for the relevant position; and
 - (ii) is approved in writing by the RMS Contract Manager.

5.3 Availability of and directions to Key People

- (a) The Service Provider must ensure that the Key People are available as and when required by the RMS Contract Manager to meet and discuss issues arising out of or in connection with the Contract or the Services.
- (b) A direction given to the Service Provider's Representative or his or her nominated representative by the RMS Contract Manager will be deemed to have been given to the Service Provider.

5.4 Succession planning

The Service Provider:

- (a) acknowledges that its team of Key People are critical to the performance of the Services; and
- (b) must ensure that its team of Key People maintain the skill, expertise, qualifications and experience required to perform the Services.

6. SUBCONTRACTING

6.1 Subcontracting

- (a) Subject to paragraph (c), the Service Provider must not subcontract any part of the Services unless it has:
 - (i) given full particulars to the RMS Contract Manager of:
 - (A) the services it wishes to subcontract; and
 - (B) the proposed subcontractor (including, if required by Law, evidence that the subcontractor is registered or licensed to carry out the services proposed to be subcontracted); and
 - (ii) obtained the RMS Contract Manager's prior written consent to that subcontracting.

- (b) Subject to paragraph (c), the Service Provider must ensure that its subcontractors do not subcontract any part of their services without the RMS Contract Manager's prior written consent.
- (c) The RMS Contract Manager may, from time to time, issue directions to the Service Provider setting out subcontracts for which its consent is not required under paragraph (a) or (b), whether by reference to type of service, materiality threshold or otherwise.

6.2 **Co-ordination of subcontractors**

The Service Provider must:

- (a) co-ordinate the work of all subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the subcontractors engaged by it; and
- (c) at all times co-ordinate the Services and ensure execution and completion of the work which is to be carried out by subcontractors engaged by it in a proper and workmanlike manner according to the relevant requirements of the Contract.

6.3 **Responsibility for subcontractors**

The Service Provider, by subcontracting any Services:

- (a) is not relieved from any of its liabilities or obligations under the Contract; and
- (b) will be responsible for all subcontractors engaged by it and for all work which is or may be subcontracted by it.

6.4 **Control of employees and subcontractors**

- (a) The Service Provider must employ, and must use its best endeavours to ensure that its subcontractors employ, in connection with the Services only persons who are:
 - (i) careful, skilled and experienced in their respective professions, trades and callings; and
 - (ii) of good character and repute and pass any security or other check including as set out in the Statement of Requirements.
- (b) The RMS Contract Manager may direct the Service Provider to remove or have removed from any location or from any activity connected with the Services, within such time as the RMS Contract Manager directs, any person employed by the Service Provider or by any subcontractor who, in the reasonable opinion of the RMS Contract Manager, is guilty of misconduct, is incompetent or negligent, becomes a security risk or otherwise does not satisfy the requirements of paragraph (a).

- (c) The Service Provider must comply with any direction under paragraph (b) and must ensure that person is not employed on any Service Location or on activities connected with the Services without the prior approval of the RMS Contract Manager.
- (d) The Service Provider must:
 - (i) comply with relevant Law in respect of conditions of employment, and all other matters, for all persons employed or utilised in the Services in Australia;
 - (ii) comply with the requirements of any country in which Goods or services used in connection with the Services are produced (if overseas content is involved); and
 - (iii) extend the principles of fair and proper treatment to third parties, including subcontractors, employees, or any other such individual or group involved in the manufacture, production or supply chain of Goods or services used in connection with the Services.

7. CONTRACT MANAGEMENT GROUP

- (a) A Contract Management Group must be established and operate in accordance with this clause 7.
- (b) The Contract Management Group comprises:
 - (i) RMS Contract Manager;
 - (ii) the Service Provider's Representative; and
 - (iii) Warehouse Manager.
- (c) The Contract Management Group:
 - (i) must meet every 3 months (or at more frequent intervals as agreed to between the parties); and
 - (ii) may invite other persons (as agreed by the RMS Contract Manager) to attend any of its meetings.
- (d) The Contract Management Group's functions are to:
 - (i) review and monitor the Service Provider's performance under the Contract;
 - (ii) seek to identify and resolve any complaints or issues between the parties;
 - (iii) identify and action any change management requirements; andcarry out such other functions as are required of it in the Contract or otherwise agreed in writing between RMS and the Service Provider.

- (e) The Service Provider must:
 - (i) take minutes of all meetings held by the Contract Management Group;
 - (ii) within 48 hours of each meeting, provide the RMS Contract Manager a copy of the minutes for the RMS Contract Manager's review and/or comment; and
 - (iii) amend and update the minutes to take account of any comments provided by the RMS Contract Manager.
- (f) If the RMS Contract Manager accepts the minutes (or any updated minutes) of the meeting as accurate, they are to be tabled at the following Contract Management Group meeting for final approval.
- (g) Each party must bear its own costs in respect of the meetings under this clause 7 and of attending to the matters arising which require their action or attention.
- (h) The parties acknowledge that the meetings under this clause 7 are consultative and advisory only and each member, in its capacity as a member of each group, cannot bind a party or make representations on its behalf. RMS may, in its absolute discretion, accept or reject decisions or recommendations arising from any meetings.

8. THE SERVICES

8.1 Service Provider Warranties

The Service Provider warrants that:

- (a) it will perform the Services:
 - (i) in accordance with the Contract including:
 - (A) the Statement of Requirements;
 - (B) the Management Plans;
 - (C) all applicable Laws;
 - (D) all applicable NSW Government policies, including any relevant RMS policies or procedures; and
 - (E) the directions of the RMS Contract Manager issued in accordance with the Contract; and
 - (F) the other requirements of the Contract;
 - (ii) without limiting any other warranty in the Contract or any other Contract obligations of the Service Provider, exercising the high

- standard of skill, care and diligence that would be expected of an experienced, competent and professional provider of the Services;
- (iii) using workmanship which is proper and workmanlike and in accordance with the requirements of the Contract and is otherwise fit for its intended purpose; and
 - (iv) using Goods and other materials which are:
 - (A) suitable and, unless otherwise specified in the Contract or approved by the RMS Contract Manager, new; and
 - (B) in accordance with the requirements of the Contract and are otherwise fit for their intended purpose and consistent with the nature and character of the Services;
- (b) it will act in RMS' best interests and that for that purpose it will exercise a duty of utmost good faith in performing its obligations under the Contract;
 - (c) it will at all times during the Term use its best endeavours to discover, and then identify for RMS, all practicable ways in which it could improve the performance of the Services, including measures which are not otherwise required under the Contract and are not industry practice, including as required by the Statement of Requirements;
 - (d) each element of the System will conform to the Statement of Requirements;
 - (e) unless, and to the extent that, it is otherwise authorised by the RMS Contract Manager, it will construct the System and its databases in a manner which is consistent with industry best practice;
 - (f) it will ensure that so far as is reasonably possible all databases which form part of the System are constructed such that they and/or the Data and the constituent data items can be readily transferred, in the required format as may be directed by the RMS Contract Manager, to a similar, but different, system at minimum cost to RMS;
 - (g) the:
 - (i) Contract Material prepared or provided by the Service Provider or any subcontractor of the Service Provider;
 - (ii) System;
 - (iii) supply or use of any Contract Material or the System by RMS; and
 - (iv) performance of its obligations under the Contract, including granting the licence under clause 15.4,

will not breach any Laws or infringe any rights (including Intellectual Property Rights) of or duties owed to any person, whether arising under contract, statute, common law or otherwise;
 - (h) it is not aware of any Claim, actual or threatened, in relation to the Contract Material or the System (including a claim that the Contract Material or the

System infringes a person's Intellectual Property Rights) and has no grounds to suspect that such a Claim will or might be made.

8.2 **Reliance**

The Service Provider acknowledges that RMS has entered into the Contract in reliance upon the warranties made by the Service Provider in the Contract.

9. **LAW AND TESTING AND QUALITY MANAGEMENT**

9.1 **Law**

The Service Provider must comply with all applicable Laws in the performance of the Services and its other obligations under the Contract.

9.2 **Quality management system**

- (a) Without limiting the Service Provider's obligations under the Contract, the Service Provider must plan, develop and implement a quality management system for the Services in accordance with the requirements set out in the Statement of Requirements.
- (b) The quality management system must be reviewed and updated by the Service Provider from time to time, for the purpose of improving the performance of the Services, including taking account of any comments made from time to time by the RMS Contract Manager.
- (c) The Service Provider must, upon request by the RMS Contract Manager, establish that it is complying with the quality management system which it is required to have in place under this clause 9.2.
- (d) The Service Provider will not be relieved of any responsibilities or obligations in respect of the Services and will remain solely responsible for those despite:
 - (A) the obligation of the Service Provider to plan, develop and implement a quality management system in accordance with the Contract;
 - (B) the fact that the Service Provider establishes compliance under paragraph (c);
 - (C) any audit conducted under the Contract, including the results of any such audit; or
 - (D) any comment upon, review or acceptance of, approval to proceed with or request to vary any part of the quality management system by the RMS Contract Manager.

9.3 Other Service Providers

The Service Provider must:

- (a) fully co-operate with Other Service Providers including so as not to interrupt or impede any Other Service Provider or RMS functions. Other Service Providers include:
 - (i) providers of E-tags and tolling equipment;
 - (ii) RMS system providers;
 - (iii) freight providers; and
 - (iv) tag disposal/end of life contractors;
- (b) carefully co-ordinate the Services with the work being carried out or to be carried out by Other Service Providers, including by giving full consideration to work health and safety matters; and
- (c) in performing the Services use its best endeavours to facilitate the execution of the work to be carried out by Other Service Providers.

9.4 Inspection of work/services

The Service Provider must at all times (and without the need for any prior notice) enable inspection of the Services and Service Locations by RMS, the RMS Contract Manager, and any other persons authorised in writing by RMS or the RMS Contract Manager.

9.5 Work Health and Safety

- (a) **(Definitions)** Without limiting the definition of "worker" in the *Work Health and Safety Act 2011 (NSW)*, in this clause 9.5, a person is a "worker" if the person carries out work in any capacity for the Service Provider, including work as:
 - (i) an employee of the Service Provider;
 - (ii) a subcontractor of the Service Provider;
 - (iii) an employee of a subcontractor of the Service Provider;
 - (iv) an employee of a labour hire company who has been assigned to work in the Service Provider's business or undertaking;
 - (v) an apprentice or trainee of the Service Provider;
 - (vi) a student gaining work experience; or
 - (vii) a volunteer.
- (b) **(Performance of Services)** The Service Provider must :

- (i) perform the Services safely and so as to fully protect all workers, other persons and property;
 - (ii) in performing the Services, undertake all things necessary to ensure the safety of all workers and other persons engaged in the Services including complying with the requirements of all Laws relating to work health and safety; and
 - (iii) implement and maintain for the Term a safety induction process for all workers and other persons engaged in the execution of the Services, including such requirements as may be notified by the RMS Contract Manager.
- (c) **(Workplace Facilities)** The Service Provider must:
 - (i) provide and maintain adequate and accessible workplace facilities for workers;
 - (ii) provide first aid equipment and facilities for all workers and other persons engaged in performing the Services in accordance with the requirements of all Law relating to work health and safety.
- (d) **(Notifications)** The Service Provider must:
 - (i) immediately notify the RMS Contract Manager of:
 - (A) any non-compliance with the requirements of this clause 9.5;
 - (B) a breach of any Law relating to safety or any Injury to any worker or other person or any other incident which would have an adverse effect on the safety of any worker or other person at any Service Locations;
 - (C) the receipt of any notice, order or communication received from any relevant Authority in connection with safety at any part of the Service Locations; and
 - (D) its recommendation for fully addressing (both retroactively and proactively) the issue under clauses 1.1(c)(i)(A), 1.1(c)(i)(B) or 1.1(c)(i)(C); and
 - (ii) take all such steps as the RMS Contract Manager may require to address any issue notified under clause 9.5(d)(i) or otherwise identified by the RMS Contract Manager.
- (e) **(Subcontractors)** The Service Provider must ensure that all subcontractors engaged by the Service Provider comply with the requirements of this clause 9.5 and prepare site safety plans to the reasonable satisfaction of the RMS Contract Manager.
- (f) **(Compliance with RMS policies)** The Service Provider must comply with specific RMS policies as directed by the RMS Contract Manager from time to time.

9.6 The environment

The Service Provider:

- (a) must comply with all Laws for the protection of the environment;
- (b) must, in performing the Services, deal with and dispose of hazardous materials in accordance with all requirements of the Law;
- (c) must not pollute, contaminate or otherwise damage the environment;
- (d) is responsible for and must at its own cost make good any pollution, contamination or damage to the environment caused by:
 - (i) the performance of the Services, whether or not it has complied with the requirements of the Contract for the protection of the environment; or
 - (ii) a failure to perform the Services in accordance with the Contract;
- (e) must ensure that all subcontractors comply with the requirements of this clause 9.6.

9.7 Industrial relations

The Service Provider must:

- (a) establish, maintain and administer an industrial relations policy which will facilitate the timely and economical performance of the Services;
- (b) use its best endeavours to prevent any industrial dispute arising which is likely to affect the performance of the Services;
- (c) immediately advise the RMS Contract Manager of details of any industrial issues which, in the opinion of the Service Provider, may adversely affect the performance of the Services; and
- (d) immediately advise the RMS Contract Manager of any industrial disputes which affect or are likely to affect the performance of the Services and take all necessary steps to settle such disputes as soon as possible.

10. MANAGEMENT PLANS

10.1 Preparation of Management Plans

- (a) The Service Provider must prepare and submit to the RMS Contract Manager each Management Plan:
 - (i) where an outline of the relevant Management Plan is included in Schedule 8 of the Contract, based on that outline Management Plan;

- (ii) no later than the time for submission of the relevant Management Plan as set out in the Schedule 8 or as otherwise directed by the RMS Contract Manager;
 - (iii) in any event, finalise each Management Plan to ensure that there is no delay or disruption to the Services; and
 - (iv) without limiting the foregoing, so that it is not rejected by the RMS Contract Manager under clause 10.1(b) later than the time for finalising the relevant Management Plan as set out in Schedule 8 or as otherwise directed by the RMS Contract Manager.
- (b) The RMS Contract Manager may:
 - (i) review any Management Plan prepared and submitted by the Service Provider; and
 - (ii) within 30 days of the submission by the Service Provider of such Management Plan, reject the Management Plan and provide written reasons for the rejection.
- (c) If any Management Plan is rejected by the RMS Contract Manager under clause 1.1(b) the Service Provider must submit to the RMS Contract Manager within 14 days a revised Management Plan which takes into account the comments and requirements of the RMS Contract Manager and clauses 1.1(b) and 1.1(c) will reapply.
- (d) Neither RMS nor the RMS Contract Manager assumes or owes any duty of care to the Service Provider to review, or when reviewing, to assess Management Plans submitted by the Service Provider for errors, omissions or compliance with the Contract.
- (e) No review of, comments upon, rejection of including the reasons for rejection, or failure to review or comment upon or reject, a Management Plan prepared by the Service Provider or any other direction by the RMS Contract Manager about such document will:
 - (i) relieve the Service Provider from, or alter or affect, the Service Provider's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) prejudice RMS' rights against the Service Provider whether under the Contract or otherwise according to Law

10.2 Compliance with Management Plans

- (a) The Service Provider must:
 - (i) comply with, and carry out the Services in accordance with, each Management Plan which has not been rejected by the RMS Contract Manager under clause 10.1(b); and

- (ii) record its compliance with the Management Plans in such a format and in such detail as are reasonably required by the RMS Contract Manager so as to facilitate any audit under clause 19.
- (b) The Service Provider agrees that its compliance with any Management Plan will not:
 - (i) relieve the Service Provider from, or alter or affect, the Service Provider's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) prejudice RMS' rights against the Service Provider whether under the Contract or otherwise according to Law.

10.3 Continuous development of Management Plans

The Service Provider:

- (a) acknowledges and agrees that:
 - (i) an intended purpose of each Management Plan is for the Service Provider to provide a detailed description of how the Service Provider intends to perform the Services in accordance with the Contract with respect to the subject matter of each Management Plan; and
 - (ii) each Management Plan will require ongoing development, amendment and updating throughout the Term;
- (b) must develop, amend or update (and resubmit to the RMS Contract Manager) the Management Plans from time to time during the Term:
 - (i) as and when required in accordance with the Statement of Requirements or as directed by the RMS Contract Manager;
 - (ii) to reflect any Variation; and
 - (iii) otherwise where either the Service Provider or the RMS Contract Manager reasonably considers it is necessary to do so to comply with the Contract or to enhance the furthering of the Service Level Indicators;
- (c) warrants that each Management Plan will be fit for its intended purposes and otherwise comply with the requirements of the Contract.

11. REPORTS

11.1 Reports

The Service Provider must provide the RMS Contract Manager with:

- (a) each Report required by the Contract in accordance with the timing and other requirements for such Reports, as set out in the Schedule 9; and

- (b) such other Reports in such form and on such matters as the RMS Contract Manager may require from time to time.

12. SYSTEM

12.1 Implementation of the System

- (a) The Service Provider must:
 - (i) as part of the Services, implement the System in accordance with the Statement of Requirements;
 - (ii) ensure that the System interfaces with RMS' systems in the manner set out in the Statement of Requirements; and
 - (iii) ensure that the System complies and continues to comply with the Statement of Requirements and the other requirements of the Contract.
- (b) The Service Provider must implement the System to the satisfaction of the RMS Contract Manager.
- (c) The Service Provider must ensure that the capability of the System, and the software comprising the System, is maintained throughout the Term and all changes required to comply with the Law, from time to time, are carried out.
- (d) The Service Provider and the System must comply with any interface requirements set out in the Statement of Requirements relating to RMS' existing information management and technology systems or, subject to the terms of the Contract, notified by the RMS Contract Manager from time to time.
- (e) The Service Provider, including all personnel who have access to the System, must comply with the security requirements set out in clause 14 and any additional security requirements set out in the Statement of Requirements.

12.2 Access to the System

- (a) The Service Provider must ensure that RMS and the RMS Contract Manager have access to the System at all times in order to use the System, including accessing information and generating reports, including as described in the Statement of Requirements.
- (b) The Service Provider must, from time to time during the Term at the RMS Contract Manager's request, provide any information concerning the System and the design and operation of the System to RMS and the RMS Contract Manager within a reasonable time of the request being received by the Service Provider.

13. CONTRACT MATERIAL

13.1 Ownership of the Contract Material

- (a) Notwithstanding any other provision of the Contract, except clauses 15.1(a), 15.4(a) and 32.8, the Service Provider agrees and acknowledges that RMS owns the Contract Material, including the Data.
- (b) The Service Provider must ensure that all of its contractual relationships are consistent with clause 13.1(a).

13.2 Access to the Contract Material

Without derogating from the Service Provider's other obligations under the Contract, the Service Provider must, from time to time during the Term at the RMS Contract Manager's request, provide a copy of the Contract Material to RMS, in the form reasonably required by the RMS Contract Manager and within a reasonable time of the request being received by the Service Provider.

14. DATA SECURITY

14.1 Acknowledgement

- (a) The Service Provider acknowledges that the Data is extremely valuable to RMS and disclosure, use or access to it, in a manner not permitted by the Contract, may cause irreparable harm and damage to RMS.
- (b) The Service Provider must follow the RMS Contract Manager's reasonable directions when collecting, storing and protecting the Data.

14.2 Backup of the Data

The Service Provider must make, securely store and retain backup copies of the Data at such times and in such a manner so as to ensure that Data can be recovered in the event of a failure of the System without adversely affecting the provision of the Services.

14.3 Security of the Data

Throughout the Term, the Service Provider must ensure that:

- (a) third parties do not gain online or physical access to the Data without the prior consent in writing of the RMS Contract Manager;
- (b) all access to the Data by the Service Provider and its personnel is:
 - (i) subject to formal access provisioning and governance procedures;

- (ii) in relation to hard copy records, protected through the utilisation of locked filing cabinets or other physical storage facilities, with keys being given only to authorised personnel; and
 - (iii) in relation to electronic records (including on any hand held or portable devices), protected through the utilisation of authentication via a password of reasonable complexity and valid duration;
- (c) all access to the Data by the Service Provider and its personnel that traverses untrusted networks (including the internet) must be:
 - (i) encrypted in accordance with accepted data encryption standards; and
 - (ii) protected through the utilisation of multi-factor authentication, requiring both a password of reasonable complexity and valid duration and a physical or electronic token;
- (d) the rights of access to the Data by the Service Provider's personnel must be revoked immediately on the termination of that person's service with the Service Provider;
- (e) its physical storage facilities, data processing equipment and operating systems are located within secure and robust facilities to:
 - (i) minimise the risk of loss or unauthorised access to the Data due to environmental and/or human threats and hazards; and
 - (ii) protect the Data against the introduction of any computer program virus or other destructive code or device; and
- (f) its subcontractors comply with the requirements of this clause 14.3 to the extent required by the RMS Contract Manager.

14.4 Notification of any Data Breach or Security Weakness

The Service Provider must immediately notify the RMS Contract Manager in writing if:

- (a) it is aware of, or suspects, that it is, or any of its personnel or subcontractors are, in breach of this clause 14; or
- (b) it is aware of, or suspects, any Data Breach or Security Weakness.

14.5 Restoration of lost Data

In addition to all other rights RMS may have under the Contract or at Law, if any Data is lost, destroyed or altered in connection with the provision of the Services by the Service Provider, the Service Provider must take all practicable measures at its own cost and regardless of cost, convenience or technical difficulty, to immediately restore the Data without additional charge.

14.6 Records and retention of Data

- (a) In addition to the Service Provider's obligations under clause 29, on the date any Data is no longer needed for the purposes of the Service Provider providing the Services, the Service Provider must immediately:
 - (i) stop using the relevant Data; and
 - (ii) subject to any legal requirement in relation to the retention of records:
 - (A) deliver to the RMS Contract Manager, or, at the RMS Contract Manager's option, destroy or permanently de-identify, all tangible records of the Data in the power, possession or control of the Service Provider or any person to whom it has given access to these records, whether or not according to the Contract; and
 - (B) erase, or destroy in another way or de-identify (including from electronic storage), all intangible records in the power, possession or control of the Service Provider or any person to whom it has given access to these records, whether or not according to the Contract.
- (b) Upon satisfying its obligations under paragraph (a), the Service Provider must provide the RMS Contract Manager with a written notice confirming such satisfaction.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Service Provider's Material

- (a) The Service Provider's Material remains the property of the Service Provider. RMS acknowledges that it does not own any Intellectual Property Rights in or to the Service Provider's Material.
- (b) The Service Provider hereby grants to RMS a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce, modify, adapt and otherwise exercise all Intellectual Property Rights in and to that part of the Service Provider's Material which is required to enable RMS to fully enjoy and exploit the Services and all Contract Material.

15.2 RMS' Material

- (a) RMS' Material remains the property of RMS. The Service Provider acknowledges that it does not own any Intellectual Property Rights in or to RMS' Material.
- (b) RMS grants to the Service Provider a royalty-free, revocable, in Australia licence to use RMS' Material during the Term for the sole purpose of providing the Services.

- (c) The Service Provider must:
 - (i) maintain and keep secure and separate all of RMS' Material in its power, possession or control, and must not do or cause to be done anything which may prejudice the subsistence of RMS' right, title and interest in and to RMS' Material; and
 - (ii) ensure that RMS' Material is only used, copied, supplied and reproduced by the Service Provider solely and directly for the purposes of the Contract.

15.3 Contract Material

- (a) To give effect to clause 1.1(a), the Service Provider:
 - (i) assigns to RMS all right, title and interest, including all Intellectual Property Rights, in and to the Contract Material including the Data so that such right, title and interest throughout the world vests automatically in RMS on creation;
 - (ii) must ensure that the Contract Material is only used, copied, supplied and reproduced by the Service Provider solely and directly for the purposes of the Contract;
 - (iii) must not do or cause to be done anything which will encumber any interest in the Contract Material to any person other than RMS; and
 - (iv) at RMS' request, must execute all documents necessary or desirable to give full effect to this clause 15.3(a).
- (b) RMS grants to the Service Provider a royalty-free, revocable, in Australia licence to use the Contract Material during the Term for the sole purpose of providing the Services.

15.4 The System

- (a) RMS acknowledges that the Service Provider will own all Intellectual Property Rights in and to the System itself (but not to any Contract Material contained within the System).
- (b) The Service Provider grants RMS a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce, modify, adapt and otherwise exercise all Intellectual Property Rights comprised in the System for the purpose of:
 - (i) accessing the System as anticipated by the Contract; and
 - (ii) exercising its ownership rights referred to in clause 13.1,as provided for in this Contract.
- (c) The licence granted under clause 15.4(b) may be sublicensed by RMS and will survive the expiry or termination of the Contract.

15.5 Perfecting licences and ownership

Without limiting any other provision of the Contract, the Service Provider must do all things necessary to perfect the licences and ownership granted to RMS in the Contract and otherwise to give effect to the Service Provider's obligations regarding the Contract Material and the System, including by obtaining or procuring at its own cost, all licences and consents from third parties relating to each copyright work or subject matter comprised in the Contract Material and the System which are necessary to enable RMS to exercise its rights under the Contract without infringing any Laws or the rights (including Intellectual Property Rights or Moral Rights) of any person, whether arising under contract, statute, common law or otherwise.

15.6 Moral Rights

The Service Provider warrants that it will ensure that each person involved in creating all or any part of the Contract Material, to the extent permitted by Law, irrevocably waives any Moral Rights they have in any copyright work or other subject matter comprised in the Contract Material and consents to RMS doing or failing to do any act in relation to those works that may, except for this clause, infringe their Moral Rights in the works including:

- (a) exercising any of the rights in the works without identifying them;
- (b) editing or otherwise materially altering the works; and
- (c) using the works as contemplated under the Contract.

16. NON-COMPLYING SERVICES

16.1 Direction to re-perform or correct

If, in the opinion of the RMS Contract Manager (acting reasonably), the Service Provider fails to perform any Services in accordance with the Contract, the RMS Contract Manager may issue a direction in respect of:

- (a) the Service Provider at the Service Provider's cost to:
 - (i) re-perform or correct the relevant Services; and
 - (ii) take all such steps as are necessary to:
 - (A) mitigate the effect on RMS of the failure to carry out the Services in accordance with the Contract; and
 - (B) put RMS (as closely as possible) in the position in which it would have been if the Service Provider had carried out the Services in accordance with the Contract; and
- (b) the reasonable times within which the Service Provider must commence and complete the re-performance or correction.

16.2 Acceptance of Services

Instead of a direction under clause 16.1, the RMS Contract Manager may:

- (a) issue a notice to the Service Provider that RMS will accept the relevant Services notwithstanding that they have not been performed in accordance with the Contract; and
- (b) determine the reasonable cost of correcting or, if necessary, re-performing the Services which have not been performed in accordance with the Contract, and the amount so determined will be a debt due from the Service Provider to RMS.

16.3 Service Provider's obligations generally

The Service Provider must (at the Service Provider's cost) promptly re-perform or correct any Services that have not been carried out in accordance with the Contract:

- (a) except to the extent that to do so would be inconsistent with a notice under clause 16.2(a); and
- (b) notwithstanding the RMS Contract Manager has not given a direction under clause 16.1.

16.4 No limitations on rights or powers

- (a) A payment, inspection, test, approval or failure to do any of these things by RMS or the RMS Contract Manager in respect of any Services will not prejudice the power of the RMS Contract Manager to subsequently give a direction under clause 16.1 or a notice under clause 16.2.
- (b) Nothing in this clause 16 will prejudice any other right (whether under the Contract or at Law) which RMS may have against the Service Provider arising out of the failure of the Service Provider to perform the Services in accordance with the Contract.
- (c) The RMS Contract Manager is not obliged to give a notice under clause 16.2 to assist the Service Provider.

16.5 Minimising disruption and inconvenience

Without limiting the other provisions of the Contract, the Service Provider must re-perform or correct any Services that have not been carried out in accordance with the Contract:

- (a) if the RMS Contract Manager has given a direction under clause 16.1 within the time specified in the RMS Contract Manager's direction under clause 16.1; and
- (b) at reasonable times and in a manner which cause as little disruption and inconvenience to RMS, or any Other Service Provider.

17. STEP-IN RIGHTS OF RMS

17.1 RMS may act

- (a) If the Service Provider fails to perform an obligation under the Contract, RMS may provide a notice to the Service Provider which specifies:
 - (i) the relevant failure to perform; and
 - (ii) a time period within which the Service Provider must correct its failure to perform.
- (b) If the Service Provider does not correct the relevant failure to perform within the time period specified in the RMS Contract Manager's notice under clause 17.1(a), RMS or the RMS Contract Manager may, either themselves or by an Other Service Provider, perform the Contract obligation which the Service Provider was obliged to perform but which it failed to perform (including the effecting or maintaining of any insurance in accordance with clause 24).
- (c) Any additional costs, losses and damages suffered or incurred by RMS in so performing such a Contract obligation will be a debt due from the Service Provider to RMS.
- (d) Nothing in this clause 17 limits the operation of clause 28.

18. SUSPENSION

18.1 Suspension

- (a) The RMS Contract Manager may at any time and from time to time:
 - (i) by a notice titled "Suspension Notice" direct the Service Provider to suspend the progress of the whole or any part of the Services specified in the direction for the time or times that the RMS Contract Manager (acting reasonably) thinks fit; and
 - (ii) at any time after directing a suspension under subparagraph (i) direct the Service Provider to recommence the whole or any part of the Services.
- (b) The Service Provider must promptly comply with all directions given under clause 18.1(a).
- (c) Subject to clause 18.1(d), the extra costs reasonably and actually incurred by the Service Provider by reason of a suspension directed under clause 18.1(a) will form part of the Reimbursable Costs:
 - (i) subject to the Service Provider complying with clause 23; and
 - (ii) unless a reason for the suspension is a failure by the Service Provider to comply with any of its obligations under the Contract.

- (d) The Service Provider must take all reasonable steps possible to mitigate the extra costs incurred by it as a result of a suspension directed under this clause 18.1.

19. AUDIT AND ACCESS TO RECORDS

19.1 Audit

- (a) The Service Provider must permit:
 - (i) RMS and the RMS Contract Manager;
 - (ii) any external auditor appointed by RMS or the NSW Government; and
 - (iii) the Audit Office of New South Wales,together with their personnel or approved agents, access to:
 - (iv) the Service Provider's premises, including physical storage facilities;
 - (v) the Service Locations and any Inventory;
 - (vi) the System and any other Data in the Service Provider's power, possession or control; and
 - (vii) any other material or thing to which the RMS Contract Manager reasonably requires access,in order to carry out an audit of the Service Provider's performance of the Services under the Contract at all times (without the need for prior notice).
- (b) The Service Provider must:
 - (i) co-operate with all requests for assistance during an audit conducted under clause 19.1(a); and
 - (ii) implement such recommendations and comply with such audit findings to the extent necessary to ensure that the Services continue to be delivered in accordance with the Contract and the Service Provider continues to meet its obligations under the Contract.
- (c) The parties will each bear their own costs of audits under clause 19.1(a), except where the audit reveals any non-compliance with the Contract by the Service Provider (including any Data Breach or Security Weakness), in which case the costs of the audit will be borne by the Service Provider.

19.2 Access to Records

The Service Provider must immediately upon request by RMS, provide RMS and the RMS Contract Manager, with access to all Government Information which is contained in Records held by the Service Provider.

20. PAYMENTS

20.1 Principal's obligation to pay the Service Provider

RMS will pay the Service Provider an amount equal to :

- (a) Client Order Fees; plus
- (b) Reimbursable Costs (if any); less
- (c) Rebates (if any) to which RMS is entitled,

in accordance with, and subject to, this clause 20 and the other requirements of the Contract.

20.2 Submission of claims by Service Provider

The Service Provider must submit to the RMS Contract Manager a detailed payment claim together with supporting information reasonably required by, and in a form satisfactory to, the RMS Contract Manager:

- (a) monthly on a regular business day of each month (nominated by the RMS Contract Manager), in respect of:
 - (i) the Client Order Fees incurred in performing the Services in the previous month;
 - (ii) the Reimbursable Costs (if any) incurred in the previous month; and
 - (iii) the Rebates (if any) to which RMS is entitled;
- (b) within 28 days after the expiration of the Term or earlier termination of the Contract; and
- (c) finally, on the date agreed with the RMS Contract Manager after the submission of the claim under clause 20.2(b), in respect of all amounts identified as outstanding but not claimed in the claim under clause 20.2(b).

20.3 Contents of claim

- (a) Each payment claim under clause 20.2 must:
 - (i) clearly identify and fully breakdown the amounts then claimed (including an itemised list of all client orders in respect of any Client Order Fees claimed);
 - (ii) certify that:
 - (A) the Reimbursable Costs claimed have been incurred in accordance with the Contract;

- (B) the client orders in respect of which Client Order Fees are claimed have been carried out in accordance with the Contract;
 - (C) the amounts claimed for Reimbursable Costs and Client Order Fees have been calculated by the Service Provider in accordance with the Contract; and
 - (D) any Rebates to which RMS is entitled have been applied in the calculation of the amount claimed by the Service Provider in accordance with the Contract;
- (iii) be accompanied by:
 - (A) a statutory declaration (with the original delivered to the RMS Contract Manager at the same time) in the form set out in Schedule 6 completed by a representative of the Service Provider with actual knowledge of the matters set out in the declaration;
 - (B) a copy of all tax invoices relating to the Reimbursable Costs claimed by the Service Provider; and
 - (C) a tax invoice for an amount which must not be greater than the amount of the payment claim (plus any applicable GST in accordance with clause 20.10).
- (b) The Service Provider must:
 - (i) maintain detailed calculations of the Reimbursable Costs and Client Order Fees claimed under clause 20.2 and copies of invoices and all other supporting documentation necessary to demonstrate that those Reimbursable Costs and Client Order Fees have been calculated and are payable to the Service Provider in accordance with the Contract;
 - (ii) maintain detailed calculations of any Rebates to be applied to the amount claimed under clause 20.2 to demonstrate that the Rebates have been applied in accordance with the Contract;
 - (iii) if required by the RMS Contract Manager in respect of any payment claim under any item in clause 20.2, immediately make copies of those calculations, invoices and other supporting documentation available to the RMS Contract Manager and explain any queries the RMS Contract Manager has.

20.4 **Conditions precedent to payment**

- (a) RMS is not obliged to make a payment under clause 20.5 unless:
 - (i) the Service Provider has provided:
 - (A) a payment claim strictly in accordance with clauses 20.2 and 20.3;

- (B) all documentation required under clause 20.3(b)(iii);
 - (C) any statutory declaration as to payment required under clause 20.3(a)(iii);
 - (D) copies of any insurance policies or certificates of currency required to be provided in accordance with clause 24;
 - (E) all documentation, reporting and financial information which it is required to have provided under the Contract, including the Statement of Requirements, in the form required by RMS; and
 - (F) in respect of the amounts claimed in the final claim under clause 20.2, a duly executed deed of release on terms satisfactory to the RMS Contract Manager releasing RMS from all claims other than those stated in the final claim; and
- (ii) the RMS Contract Manager is otherwise satisfied, acting reasonably, that the payment claim and the amount of the tax invoice provided by the Service Provider under clause 20.3(a)(iii)(C) have been calculated in accordance with the Contract.
- (b) Failure by the RMS Contract Manager to identify any error or non-compliance under clause 20.4(a)(ii) will not prejudice RMS' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract or any other claim RMS may have against the Service Provider.

20.5 **Payment**

- (a) Subject to clauses 20.4 and 20.8(d), RMS must pay the amount set out in the tax invoice issued under clause 20.3(a)(iii)(C) within 30 days of the RMS Contract Manager receiving the tax Invoice under clause 20.3(a)(iii)(C).
- (b) If the tax invoice issued under clause 20.3(a)(iii)(C) shows a negative amount, RMS will be entitled to set off that negative amount against any future payments to the Service Provider.

20.6 **Payment not evidence**

The payment of moneys by RMS is to be taken to be payment on account only and any such payment is not to be taken as evidence against or an admission by RMS:

- (a) of the value of any work or services or item of work or services; or
- (b) of any work or services having been performed in accordance with the Contract.

20.7 **Accounting records**

The Service Provider must, throughout the Term, keep and maintain (and provide the RMS Contract Manager with access to, upon request) accurate and up to date accounting records relating to the Services, including:

- (a) books of account;
- (b) invoices for the purchase of Associated Products which the Service Provider claims are Reimbursable Costs; and
- (c) any other documents or papers which could be required by the RMS Contract Manager to establish the actual client orders fulfilled or Associated Products purchased, including calculations and working papers, and such records will fall within the definition of Contract Material.

20.8 All work included

- (a) The Service Provider acknowledges that:
 - (i) it has made an allowance in the Client Order Fees for all costs, labour, preliminaries, attendance, supervision, on and off site overheads, goods, materials, spare parts, vehicles, plant, equipment and consumables and all other tasks and things which are required to enable the Service Provider to plan and perform the Services, other than those parts of the Services which are specifically covered by the Reimbursable Costs;
 - (ii) it is not entitled to make any Claim (insofar as is permitted by law) against RMS arising out of or in connection with the performance of that part of the Services referred to in paragraph (a)(i), other than for the Client Order Fees; and
 - (iii) without limiting any of RMS' rights under the Contract (including in respect of a breach of Contract), the amount of the Rebate represents an amount commensurate with the reduction in the value of the Services provided by the Service Provider.
- (b) Without limiting paragraph (a), the Service Provider acknowledges that:
 - (i) RMS has not made any warranty, guarantee or representation as to the volume of Services that may be required to be performed by the Service Provider under the Contract;
 - (ii) the actual volume of Services required to be performed by the Service Provider under the Contract may fluctuate from time to time; and
 - (iii) RMS will not be liable for any adjustment of the Client Order Fees or upon any other Claim (insofar as is permitted by Law) by the Service Provider, arising out of or in connection with the actual volumes of any Services required to be performed by the Service Provider during the Term.
- (c) The Service Provider must provide all costs, labour, preliminaries, attendance, supervision, on and off site overheads, goods, materials, spare parts, vehicles, plant, equipment and consumables which are required to enable the Service Provider to comply with its obligations under the Contract or which are to be reasonably inferred from the Contract, notwithstanding that they are not expressly mentioned in the Contract.

- (d) Unless otherwise expressly stated in the Contract, the Service Provider must perform the Services and carry out all of its other obligations under the Contract at its cost.
- (e) RMS agrees to provide access during the Term to one desktop computer and any necessary associated equipment, which will be provided onsite at an RMS nominated location, for use by the Service Provider's nominated personnel to perform the Services.

20.9 Right of RMS to recover moneys

- (a) Without limiting RMS' rights under any other provision in the Contract (including in respect of Rebates) or under any other principle of Law, RMS may deduct:
 - (i) any Claim (liquidated or unliquidated) which RMS may have against the Service Provider under or by virtue of the Contract or otherwise at Law; or
 - (ii) any debt due by the Service Provider to RMS,from any moneys which may be or become payable to the Service Provider by RMS.
- (b) This clause does not affect the right of RMS to recover from the Service Provider the whole of the debt or claim or any balance that remains owing after deduction.

20.10 GST

- (a) If GST is or will be payable on a supply made under or in connection with the Contract or the provision of the Services, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST, the party making the supply ("**Supplier**") will be entitled to increase the consideration for the supply by the amount of any applicable GST.
- (b) Subject to paragraph (d), any amounts on account of GST will be payable at the same time as other consideration is provided for a taxable supply and to the same extent as that consideration is provided at that time.
- (c) Where an amount is payable to a party which is based on the actual or reasonable costs incurred by that party, the amount payable will be reduced by the amount of any input tax credits available to the party (or a representative member on the party's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
- (d) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply. The tax invoice must contain sufficient details for the recipient to be able to ascertain the amount of any input tax credits available to it.

- (e) If the amount paid to the Supplier in respect of GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier subject to the provision of an adjustment note by the Supplier (if the deficiency arises from an adjustment) provided that the recipient is entitled (or would be entitled if the supply related to a creditable purpose) to claim a decreasing adjustment.
- (f) In this clause:
 - (i) "GST" has the meaning given to it in the GST Law;
 - (ii) "GST Law" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) terms used in this clause which are defined in the GST Law have the meaning given to them in the GST Law.

21. VARIATIONS

21.1A Directing Variations

The Service Provider shall not vary the Services except as directed in writing unless the RMS Contract Manager is of the opinion that the matter is one of such urgency that the Service Provider should proceed without waiting for a written direction, in which case the Service Provider shall proceed with the Services the subject of the Variation and the RMS Contract Manager shall confirm the direction in writing as soon as possible thereafter.

Whether or not the RMS Contract Manager has given the Service Provider written notice of a proposed Variation under 21.1(a), the RMS Contract Manager, before the expiry of the Term, may direct the Service Provider to vary the Services by any one or more of the following:

- (a) increase, decrease or omit any part of the Services;
- (b) change the character or quality of any part of the Services; and
- (c) carry out additional Services.

The Service Provider shall comply with any such direction. Despite any provision of the Contract to the contrary, no variation shall invalidate, or amount to a repudiation of, the Contract.

21.1 Notice of variation by RMS Contract Manager

The RMS Contract Manager may, from time to time, give the Service Provider:

- (a) a written document titled "Variation Proposal" giving notice of a proposed Variation and requiring the Service Provider to provide the following details:
 - (i) the adjustment (if any) which the Service Provider considers should be made to the Client Order Fees (or made to any other amount);
 - (ii) the effect (if any) of that proposed Variation on:
 - (A) any time obligations under the Contract; or
 - (B) any of the Service Provider's other obligations under the Contract; and
 - (C) any other information reasonably required by the RMS Contract Manager in relation to the carrying out of that proposed Variation; or
- (b) whether or not the RMS Contract Manager has previously issued a Variation Proposal, a written document titled "Variation Notice" directing the Service Provider to carry out a Variation.

21.2 Response by Service Provider to variation proposal

If the Service Provider receives a Variation Proposal under clause 0(a), then the Service Provider must give the RMS Contract Manager the details required by the notice relating to the proposed Variation within 5 business days (or such later period as may be set out in the notice) of receiving that notice.

21.3 Response by Service Provider to variation notice

If the Service Provider receives a Variation Notice under clause 0(b), then the Service Provider must give the RMS Contract Manager a notice in writing within 14 business days (or such later period as may be set out in the notice) of receiving such a direction, setting out:

- (a) the adjustment (if any) which the Service Provider considers should be made to the Client Order Fees (or made to any other amount);
- (b) the effect (if any) of that Variation on:
 - (i) any time obligations under the Contract; or
 - (ii) any of the Service Provider's other obligations under the Contract.

21.4 Notice of variation by Service Provider

If the Service Provider wishes to claim that a direction by the RMS Contract Manager or RMS is a Variation notwithstanding that neither a Variation Proposal nor a Variation Notice has been given under clause 0 nor an urgent direction has been given under clause 1.1(b)(ii)(A), relating to the work the subject of the direction, then the Service Provider must give the RMS Contract Manager a notice in writing within 14 business days of receiving such a direction and before commencing the work the subject of the direction, setting out:

- (a) the details of the proposed Variation;
- (b) the adjustment (if any) which the Service Provider considers should be made to the Client Order Fees (or made to any other amount);
- (c) the effect (if any) of that proposed Variation on:
 - (i) any time obligations under the Contract; or
 - (ii) any of the Service Provider's other obligations under the Contract.

21.5 **Bar**

Notwithstanding that the Service Provider is obliged to perform the work the subject of a Variation, the Service Provider will not be entitled to, and RMS will not be liable for, any increase in the Client Order Fees (or any other amount) or any other Claim (insofar as is permitted by Law) arising out of or in connection with the Variation unless:

- (a) in the case of a direction referred to in clause 21.4, the Service Provider has complied strictly with clause 21.4; or
- (b) in the case of a Variation Proposal under clause 0(a), the RMS Contract Manager has issued a Variation Notice under clause 0(b).

21.6 **Adjustment for Variation**

Subject to clause 21.5, the amounts payable under the Contract will be adjusted (whether upwards or downwards) on account of a Variation from the date stated in the Variation Notice issued under clause 0(b) by:

- (a) an amount agreed between the RMS Contract Manager and the Service Provider including, where the RMS Contract Manager states in the Variation Notice that it agrees with the adjustment notified by the Service Provider under clause 21.2, that amount; or
- (b) failing agreement, a reasonable amount determined by the RMS Contract Manager having regard to the rates and prices and other provisions of the Contract (if any) applicable to the calculation of that amount.

21.7 **Omissions**

If the RMS Contract Manager directs a Variation omitting any part of the Services:

- (a) RMS may thereafter either perform the omitted services itself or employ or engage another person or Other Service Provider to perform the omitted Services; and
- (b) RMS will not be liable upon any Claim (insofar as is permitted by Law) by the Service Provider arising out of or in connection with the direction, except to the extent contemplated in this clause 21.

21.8 Pre Agreed Variation

The parties agree that if the circumstances described in the Pre Agreed Variation occur, the PAV Rate will apply as described in Part B (Pre Agreed Variation) of Schedule 2 (Pricing).

22. SERVICE LEVEL INDICATORS

22.1 Purpose of Service Level Indicators

The Service Provider acknowledges that the purpose of the Service Level Indicators is to specify quantitative and qualitative assessment mechanisms to enable the parties to measure and monitor the performance of the Service Provider under the Contract against specified targets.

22.2 Recording and measuring performance

The Service Provider must keep sufficient records of the Service Provider's performance, including as against the Service Level Indicators, to enable the Service Provider to report on, and the parties to monitor the performance of, the Service Provider under the Contract in the manner set out in Schedule 9 or as otherwise directed by the RMS Contract Manager.

23. NOTIFICATION OF CLAIMS

23.1 Notices

If the Service Provider wishes to make a Claim, other than a Claim described in clause 23.4, it must give the RMS Contract Manager the following two notices:

- (a) within 14 days of the first occurrence of the events on which the Claim is based, written notice:
 - (i) that it proposes to make the Claim; and
 - (ii) of the events upon which the Claim will be based; and
- (b) within 28 days of giving the notice under paragraph (a), written notice setting out:
 - (i) detailed particulars of the events on which the Claim is based;
 - (ii) the legal basis for the Claim;
 - (iii) the facts relied upon in support of the Claim; and
 - (iv) details of the quantification of the amount claimed.

23.2 Continuing events

If the events upon which the Claim is based or the consequences of the events are continuing, the Service Provider must continue to give the detailed particulars required under clause 23.1(b) every 28 days after the first date particulars are provided until the events or the consequences have ceased.

23.3 Bar

RMS will not be liable upon any Claim (insofar as is permitted by Law), unless the Service Provider has strictly complied with clauses 23.1 and 23.2.

23.4 Excluded Claims

Clauses 23.1 and 23.2 will not apply to Claims by the Service Provider under clauses 20.2 and 21.2.

24. TITLE, RISKS, INSURANCE AND LIMITATION OF LIABILITY

24.1 Title to Inventory

RMS retains title to all Inventory which is held by the Service Provider as bailee under contract.

24.2 Risks and indemnity

- (a) Except to the extent that it arises from an Excepted Risk, the Service Provider will bear the risk of and must indemnify and hold harmless RMS on demand from and against:
 - (i) any loss of or damage to property of RMS (including Inventory);
 - (ii) liability for any loss of or damage to the property of a third party;
 - (iii) any liability to or Claim in respect of bodily injury, disease, illness to or death of any person; and
 - (iv) any liability, loss, damage, cost or expense (including legal costs) which is incurred or suffered by RMS arising out of, in connection with or relating to any infringement Claim,arising out of, in connection with, or relating to the Services.
- (b) Without limiting any other indemnity under the Contract, the Service Provider must indemnify RMS against all costs (including legal costs), expenses, liabilities (including any liabilities of RMS to a person who has entered into a contract with RMS), fines and penalties (to the extent permitted by Law), losses and damages suffered or incurred by RMS to the extent that they arise out of, are in connection with or relate to a breach by the Service Provider of the Contract.

- (c) If the Service Provider is required to indemnify RMS under clause 24.2(a)(iv) then RMS will provide the Service Provider with all information and assistance reasonably required by the Service Provider to settle or defend the relevant claim, provided that the Service Provider pays RMS' costs of doing so.

24.3 Insurance

- (a) The Service Provider must effect and maintain the insurances (which, for the purposes of this clause 24.3, will be satisfied where the Service Provider causes such insurances to be effected and maintained or where the Service Provider is insured under such insurances) for the times and in the manner specified in this clause 24.3, and otherwise on terms acceptable to the RMS Contract Manager (acting reasonably), without requiring insurance to be effected to the extent that a particular risk:
 - (i) is insured against under other insurance effected in compliance with this clause 24.3; or
 - (ii) has been expressly retained by RMS, except to the extent that such retention by RMS is dependent on the Service Provider being liable only to the extent that it is insured for the liability.
- (b) The Service Provider must use its best endeavours to ensure that its subcontractors are insured as would be required by this clause 24.3 if they were the Service Provider (having regard to the services to be performed by each subcontractor), and as is otherwise prudent given the nature of services or work to be performed by them.
- (c) **(workers compensation)** The Service Provider must effect and maintain workers compensation insurance or registrations as required by Law.
- (d) **(public and products liability)** The Service Provider must effect and maintain public and products liability insurance or warehouse legal liability insurance on an occurrence basis with a limit of indemnity of not less than:
 - (i) \$20 million each and every occurrence for public liability claims; and
 - (ii) \$20 million each occurrence and in the aggregate for all occurrences in any 12 month policy period for products liability claims,which covers:
 - (iii) the Service Provider, its officers, employees and agents (including for liability to each other); and
 - (iv) RMS for its vicarious liability for the acts or omissions of the Service Provider, its officers, employees and agents,for their respective liabilities for any:
 - (v) loss of, damage to, or loss of use of, any tangible property (including RMS' property in the care, custody or control of the Service Provider from time to time for a sub-limit of not less than the full replacement value of

such property) unless that property is insured against the risks of loss and damage under the insurance referred to in clause 24.3(e) (property); or

(vi) the bodily injury, disease, illness or death of any person,

caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract.

(e) **(property)** The Service Provider must effect and maintain all risks property insurance covering:

(i) any property of RMS in the care, custody or control of the Service Provider unless and to the extent that the liability of the Service Provider for the loss or damage of that property is insured under the insurance referred to in clause 24.3(d) (**public and products liability**); and

(ii) all other property, plant and equipment in the care, custody or control of the Service Provider, its agents or subcontractors, material to the Service Provider's ability to perform its obligations under the Contract (including the Service Locations, warehouses or other facilities where Inventory is stored or the Services will be performed),

against the risks of loss, damage or destruction by all commercially Insurable risks (including earthquake, fire, flood, lightning, storm and tempest, malicious damage and resulting loss or damage arising from faulty material, workmanship or design), for the full replacement or reinstatement value of such insured property and including cover for:

(i) Inventory during transits (and storage during transits) and during loading and unloading for the purposes of transit;

(ii) consultant's fees;

(iii) extra costs of reinstatement; and

(iv) removal of debris.

The insurance must insure the Service Provider and RMS, each for their respective interests in the property insured.

(f) **(motor vehicle)** The Service Provider must effect and maintain:

(i) compulsory third party insurance as required by Law in respect of all registered plant and motor vehicles used by the Service Provider, its officers, employees and agents in connection with the Services and its other obligations under the Contract; and

(ii) comprehensive motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10 million each and every occurrence covering:

- (A) third party property loss or damage arising out of the use by the Service Provider, its officers, employees and agents of any registered or unregistered plant or vehicles; and
- (B) third party bodily injury, disease, illness or death arising out of the use by the Service Provider, its officers, employees and agents of any unregistered plant or vehicles and, any registered vehicles not required to be insured under compulsory third party insurance in a foreign jurisdiction,

in connection with the Services and its other obligations under the Contract.

- (g) **(periods of insurance)** The insurances and registrations referred to in:
 - (i) the following clauses must be effected before the Service Provider commences the Services, and thereafter be maintained until all the Services and its other obligations under the Contract are completed:
 - (A) clause 24.3(c) **(workers compensation)**;
 - (B) clause 24.3(d) **(public and products liability)**; and
 - (C) clause 24.3(e) **(property)**;
 - (ii) clause 24.3(f) **(motor vehicle)** must be effected on or before the date the plant or vehicle is used in connection with the Services or its other obligations under the Contract and maintained until such plant or vehicle ceases to be so used.
- (h) **(insurer security)** With the exception of statutory insurances, the insurances referred to in this clause 24.3 must be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by RMS acting reasonably.
- (i) **(insurance terms)** With the exception of statutory insurances, the insurances referred to in this clause 24.3 must provide that the insurer agrees:
 - (i) to provide at least 20 business days prior written notice of cancellation to the insured;
 - (ii) that the policy operates (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each party comprising the insured;
 - (iii) that a failure by any insured to observe and fulfil the terms of the policy or to comply with the pre-contractual duty of disclosure does not prejudice the insurance of any other insured;
 - (iv) that the conduct, state of mind or knowledge of one insured will not be imputed to any other insured for the purposes of determining the availability of cover under the policy; and

- (v) that a notice of a claim by any insured will be accepted as notice by all insured entities.
- (j) **(evidence of insurance)** The Service Provider must, prior to the date of the Contract and annually before the commencement of each year and at such other times as required by the RMS Contract Manager, produce satisfactory evidence to the RMS Contract Manager of the currency and terms of the insurances referred to in this clause 24.3, including:
 - (i) certificates of currency issued by the insurer or by the Service Provider's insurance broker which contains sufficient detail to enable RMS to ascertain whether the insurances are in compliance with this clause 24.3;
 - (ii) copies of all policies (except for statutory insurances and provided that, in relation to commercially sensitive policies only, for the purpose of complying with this clause 24.3(j)(ii), such policies may be made available for inspection by the RMS Contract Manager or RMS' advisers, at a place and time reasonably convenient to the RMS Contract Manager or RMS' advisers); and
 - (iii) other evidence of the insurances which RMS or the RMS Contract Manager reasonably requires.
- (k) **(right of RMS to effect insurances)**
 - (i) If the Service Provider fails to comply with clause 24.3(j), RMS may, but is not obliged to, effect and maintain the relevant insurances and may:
 - (A) recover the cost of doing so as a debt due to RMS; or
 - (B) deduct the premiums payable for the relevant insurances from amounts payable to the Service Provider under the Contract.
 - (ii) In the event RMS elects to exercise its rights under clause 24.3(k), the Service Provider must provide RMS with all reasonable assistance to allow RMS to exercise those rights, including by executing documents and providing insurance proposal information to RMS' insurance broker and proposed insurers.
- (l) **(obligations of Service Provider in relation to required insurances)**

In respect of each insurance referred to in this clause 24.3, the Service Provider must:

 - (i) pay (or cause to be paid) all premiums and deductibles as and when they are due;
 - (ii) not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
 - (iii) if necessary, rectify anything which might prejudice any insurance;

- (iv) reinstate an insurance policy if it lapses;
 - (v) not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of the RMS Contract Manager;
 - (vi) immediately notify the RMS Contract Manager of any event which may result in an insurance policy lapsing or being cancelled;
 - (vii) immediately inform the RMS Contract Manager if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by RMS against the Service Provider) which could materially reduce the available limits of indemnity or which may involve RMS, and must reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the Services or the Service Provider's other obligations under the Contract, if requested to do so in writing by the RMS Contract Manager;
 - (viii) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of any claims under the insurance; and
 - (ix) do everything reasonably required by the RMS Contract Manager or any other person for whose benefit the policy is effected to enable RMS or that other person to claim and to collect or recover monies due under any insurance policy.
- (m) **(Service Provider not to prejudice insurances of RMS)** The Service Provider must not do anything which has been notified to the Service Provider in writing by the RMS Contract Manager that may invalidate or prejudice any insurance policy held by RMS or any indemnity to which RMS may be entitled.
- (n) **(changes to insurance requirements)** RMS may increase or decrease the limits of indemnity required for the insurances referred to in, or change the types of insurances required by, this clause 24.3 at each renewal date of the relevant insurance by providing 3 months prior written notice to the Service Provider. RMS may only increase the limits of indemnity required for the insurances referred to in, or require additional insurances under this clause 24.3 where it has obtained an opinion from a reputable insurance broker or otherwise appropriately qualified consultant that an increase is required in order to conform with current prudent insurance practice for a company with a risk profile comparable to the Service Provider. Any increased premium will be a Reimbursable Cost.

24.4 Disclaimer

In specifying levels of insurance in the Contract, RMS accepts no liability for the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect of how they may or may not respond to any loss, damage or liability.

24.5 Limitation of Service Provider's liability

- (a) The Service Provider's liability to RMS for all costs, losses, expenses and damages in respect of or arising out of any common law or statutory cause of action arising under or in connection with the Contract ("**Cause of Action**") relating to:
 - (i) a wilful or deliberate breach of the Contract by the Service Provider;
 - (ii) bodily injury, disease, illness or death of any person;
 - (iii) loss of, or damage to, tangible property of third parties; and
 - (iv) liability in relation to Intellectual Property Rights or confidentiality rights,is unlimited.
- (b) Except to the extent to which the liability of the Service Provider is unlimited under clause 24.5(a), insofar as is permitted by Law, the liability of the Service Provider for all costs, losses, expenses and damages relating to a Cause of Action is capped at the higher of the Insured Sum and \$10 million.
- (c) For the purposes of clause 24.5(b), the "Insured Sum" means the higher of:
 - (i) the amount recovered by the Service Provider under an insurance policy in respect of the liability; or
 - (ii) the amount that would have been recovered by the Service Provider in respect of the liability but for:
 - (A) a failure by the Service Provider to
 - (1) comply with clause 24.3; or
 - (2) claim under the relevant insurance, comply with the claim procedures under the relevant insurance, or diligently pursue the claim;
 - (B) the Service Provider not complying with any provision, obligation or duty owed under or in respect of the relevant insurance (including the pre-contractual duty to disclose); or
 - (C) the operation of any self-insured retention, deductible excess or co-insurance under the terms of the relevant insurance.
- (d) The limitations of liability in this clause 24.5 do not operate to the extent that an insurer of the Service Provider seeks to rely on it as a basis for denying indemnity to the Service Provider.

25. CONFLICT OF INTEREST

The Service Provider must:

- (a) use its best endeavours to ensure that no conflict of interest or perception of a conflict of interest arises in the performance of the Services or the performance of the obligations of any subcontractor;
- (b) if, during the Term, any such conflict of interest or perception of a conflict of interest arises, notify the RMS Contract Manager immediately in writing of that conflict and take all steps required to remove the conflict and notify the RMS Contract Manager of the steps so taken to remove the conflict; and
- (c) unless expressly authorised in writing by the RMS Contract Manager, not itself, or allow a related body corporate to tender for any Services procured by the Service Provider under the Contract.

26. REPRESENTATIONS AND WARRANTIES

26.1 Representations and warranties

The Service Provider represents and warrants to RMS that:

- (a) **(status)** it and each of its subsidiaries is a company limited by shares under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into the Contract and to carry out the transactions that it contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into the Contract and to carry out the transactions contemplated;
- (d) **(authorisations)** it holds each authorisation that is necessary or desirable to:
 - (i) enable it to properly execute the Contract and to carry out the transactions that it contemplates;
 - (ii) ensure that the Contract is legal, valid, binding and admissible in evidence; and
 - (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;

- (e) **(documents effective)** the Contract 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;
- (f) **(no contravention)** neither its execution of the Contract nor the carrying out by it of the transactions that the Contract 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; or
 - (iv) contravene its constitution or the powers or duties of its directors;
- (g) **(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;
- (h) **(information):**
 - (i) the information and reports (if any) that it has given to RMS in connection with the Contract are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - (ii) any forecasts, projections and opinions in them are fair and reasonable (and were made or formed on the basis of recent historical information and reasonable assumptions after due enquiry and consideration by appropriate officers of the Service Provider), as at the date of the Contract or, if given later, when given;
- (i) **(disclosure of relevant information)** it has disclosed to RMS all the information that is reasonably likely to be material to an assessment by RMS of the risks that it assumes by entering into the Contract;
- (j) **(no Controller)** no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries;
- (k) **(no trust)** it is not entering into the Contract as trustee of any trust or settlement; and
- (l) **(proposal)** prior to the date of the Contract, it had no knowledge of any part of the proposal by any other proponent for the delivery of the Services and has not directly or indirectly communicated any part of its proposal for the delivery of the Services to any other proponent.

26.2 Reliance on representations and warranties

The Service Provider acknowledges that RMS has executed the Contract and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause 26.

26.3 No representations by RMS

The Service Provider acknowledges that:

- (a) it has not relied and will not rely on any financial or other advice, representation, statement or promise provided or made by or on behalf of RMS in deciding to enter into the Contract or to exercise any right or perform any obligation under it, unless it is expressly provided or made to it by or on behalf of RMS under any related agreement; and
- (b) to the extent (if any) that RMS has expressly provided any such advice, representation, statement or promise, RMS is not liable to update it or for any error or change in the factual circumstances on which it was based.

26.4 Information

- (a) The Service Provider:
 - (i) acknowledges that before submitting its Tender for the Contract, the Service Provider duly executed and submitted to RMS a confidentiality undertaking or confidentiality deed poll;
 - (ii) acknowledges that RMS does not warrant, guarantee or make any representation about the accuracy or adequacy of any documents, information or data not forming part of the Contract (including as referred to in the undertaking or deed poll referred to in paragraph (a)(i)) made available to the Service Provider, whether before, on or after the date of the Contract, in relation to the Services, whether by RMS, the RMS Contract Manager or RMS' professional service subcontractors, employees or agents ("**Information**");
 - (iii) must not rely on the Information and must review and check that Information and satisfy itself about the accuracy and adequacy of that information;
 - (iv) must immediately give the RMS Contract Manager written notice of any error in or omission from any Information; and
 - (v) will not have any Claim (insofar as is permitted by Law) against RMS arising out of or in connection with the Information.
- (b) The Service Provider warrants that:
 - (i) it examined all information (including Information) relevant to the risks, contingencies and other circumstances which could affect its offer for the Services and which RMS has made available or which the Service Provider could otherwise have obtained by making reasonable enquiries before submitting its Tender for the Services;
 - (ii) it informed itself completely of the nature of the work and materials necessary for the execution of the Services before the date of the Contract;

- (iii) it informed itself as to the availability and cost of labour including the costs of complying with obligations imposed by any agreement between the relevant unions and employers relating to the execution of Services nationally and in the State of New South Wales and the materials required for the Services before the date of the Contract;
 - (iv) it informed itself of all Law in relation to the Services and the Service Locations generally and (without limitation) in relation to work health and safety or measures necessary to protect the environment from any adverse effect or damage arising from execution of the Services before the date of the Contract; and
 - (v) it will, continue to obtain and examine all information and advice and otherwise inform itself of all matters referred to in subparagraph (ii), (iii) and (iv).
- (c) The Service Provider:
 - (i) acknowledges that it did not in any way rely upon any Information, representation, statement or documentation not forming part of the Contract which has been made by or provided to the Service Provider by:
 - (A) RMS;
 - (B) anyone on behalf of RMS; or
 - (C) any of the professional service subcontractors engaged by RMS,for the purposes of entering into the Contract;
 - (ii) warrants that it:
 - (A) enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
 - (B) will make its own assessment of the accuracy, completeness or suitability of any information, representation, statement or documentation referred to in paragraph (a); and
 - (iii) acknowledges that RMS has entered into the Contract relying upon the acknowledgment in paragraph (c)(i) and the warranty in paragraph (c)(ii).

27. DISPUTES

27.1 Scope

Any dispute or difference between the parties, or between the Service Provider and the RMS Contract Manager, which arises out of, relates to or is in connection with the Contract or the Services (including any dispute or difference as to the formation,

validity, existence or termination of the Contract) must be resolved in accordance with the procedure in this clause 27.

27.2 Notice of Dispute

- (a) A dispute or difference referred to in clause 27.1 will be referred to the Dispute Representatives if a party ("**Referring Party**") gives notice to the other party ("**Dispute Notice**"). The Dispute Notice must:
 - (i) be in writing;
 - (ii) be titled "Dispute Notice";
 - (iii) include or be accompanied by reasonable particulars of the dispute or difference including:
 - (A) a description of the circumstances in which the dispute or difference arose;
 - (B) references to any:
 - (1) provisions of the Contract;
 - (2) acts or omissions of any person, relevant to the dispute or difference; and
 - (C) where applicable, the amount in dispute (whether monetary or non-monetary) and if not precisely known, the best estimate available.
- (b) If a dispute or difference is referred to the Dispute Representatives under paragraph (a), then those representatives must meet and undertake negotiations in good faith to seek to resolve the dispute or difference.

27.3 Litigation

If the Dispute Representatives do not resolve a dispute or difference within 30 days (or such further period as may be agreed between the RMS Contract Manager and the Service Provider) of the Referring Party giving the Dispute Notice, either party may commence court proceedings in respect of the Dispute.

27.4 Proceeding with the Services

The Service Provider must at all times continue to perform its obligations under the Contract, including to perform the Services, and in so doing comply with all instructions of the RMS Contract Manager notwithstanding the existence of a dispute or difference.

28. DEFAULT AND TERMINATION

28.1 Notice of breach which is capable of remedy

If the Service Provider commits a breach of the Contract which is capable of remedy, RMS may:

- (a) give a written notice to the Service Provider in accordance with clause 28.2; or
- (b) give a written notice to the Service Provider requiring the production and implementation of a cure plan in accordance with clause 28.3.

28.2 Contents of notice

The notice under clause 28.1(a) must state:

- (a) that it is a notice under clause 28.1(a);
- (b) the relevant breach relied upon; and
- (c) that the Service Provider must rectify the breach within 14 days of the date of the notice or such other period as may be specified in the notice.

28.3 Cure Plan

- (a) The notice under clause 28.1(b) must state:
 - (i) that it is a notice under clause 28.1(b);
 - (ii) the relevant breach relied upon; and
 - (iii) that the Service Provider must prepare a draft cure plan ("**Draft Cure Plan**") within 14 days of the date of the notice or such other period as may be specified in the notice.
- (b) The RMS Contract Manager will review any Draft Cure Plan prepared and submitted by the Service Provider and within 14 days of the submission by the Service Provider of the Draft Cure Plan either:
 - (i) approve the Draft Cure Plan; or
 - (ii) provide comments on the Draft Cure Plan to the Service Provider.
- (c) If the RMS Contract Manager provides comments on the Draft Cure Plan under clause 28.3(b), the Service Provider must submit to the RMS Contract Manager within 14 days a revised Draft Cure Plan which takes into account the comments and requirements of the RMS Contract Manager and clause 28.3(b) and this clause 28.3(c) will reapply.
- (d) If the RMS Contract Manager approves a Draft Cure Plan under clause 28.3(b) ("**Approved Cure Plan**"), the Service Provider must comply with and

implement the Approved Cure Plan and remedy the breach within the applicable time stated in the Approved Cure Plan.

28.4 Termination

If the Service Provider:

- (a) fails to:
 - (i) rectify the breach within the time stated in a notice in accordance with clause 28.1(a); or
 - (ii) provide a Draft Cure Plan within the time stated in a notice in accordance with clause 28.1(b) or otherwise fails to comply with and implement an Approved Cure Plan in accordance with its terms;
- (b) commits a breach which is incapable of remedy;
- (c) commits a breach of clause 14 (Data Security);
- (d) commits a breach of clause 25 (Conflict of Interest);
- (e) commits a breach of clause 31 (Confidentiality); or
- (f) suffers Financial Difficulty (which is deemed to be a breach of the Contract),

RMS may (in its absolute discretion and without prejudice to any other right which RMS may have) terminate the Contract by notice in writing to the Service Provider from the date stated in the notice.

28.5 Consequences of termination

After termination of the Contract by RMS, whether under clause 28.4 or at common law, RMS will:

- (a) be entitled to recover from the Service Provider, including by way of deduction from any money referred to in paragraph (b), any costs, losses and damages incurred by it arising out of or in connection with such termination;
- (b) not be obliged to make any further payments to the Service Provider, including any money the subject of a payment claim under clause 20.2, except to the extent that there is any such money left in the hands of RMS after:
 - (i) the deduction to which RMS is entitled under paragraph (a) has been made; and
 - (ii) RMS has (if in its absolute discretion it has elected to do so) paid subcontractors directly for any amounts outstanding.

28.6 Termination for convenience

- (a) Without prejudice to any of RMS' other rights under the Contract, RMS may:

- (i) at any time for its sole convenience and in its absolute discretion, terminate the Contract by written notice to the Service Provider, with such termination to take effect on the applicable date set out in the notice (which date must be at least 60 days after the date of the notice); and
 - (ii) either itself or by a third party thereafter carry out the Services.
- (b) If RMS terminates the Contract under clause 28.6(a), then the Service Provider will be entitled to payment of the following amounts as determined by the RMS Contract Manager:
 - (i) the Reimbursable Costs incurred to the date of termination (less amounts previously paid to the Service Provider); plus
 - (ii) the Client Order Fees incurred to the date of termination (less amounts previously paid to the Service Provider); less
 - (iii) the Rebates (if any) to which RMS is entitled.
- (c) The amount to which the Service Provider is entitled under clause 28.6(b) will be full compensation for the termination and RMS will not be liable upon any Claim (insofar as is permitted by Law) in respect of that termination other than for the amount payable under clause 28.6(b).

28.7 Wrongful termination

- (a) If RMS terminates or purports to terminate the Contract, other than under clause 28.6(a), and it is subsequently found by any court or arbitrator that the action was wrongful:
 - (i) that action will be deemed to have been a termination in accordance with clause 28.6(a); and
 - (ii) the Service Provider's sole rights in those circumstances will be those set out in clause 28.6(b).
- (b) If RMS seeks to rely on this clause 28.7, it shall not be open to the Service Provider to challenge such reliance upon good faith grounds.

28.8 No prejudice to common law

This clause 28 does not prejudice RMS' rights or remedies under the common law, including the recovery of damages.

29. HANDOVER AND TRANSITION OUT

29.1 Handover

Upon the expiration of the Term or earlier termination of the Contract, the Service Provider must (without limiting its other obligations under the Contract):

- (a) novate to RMS, or to any person nominated by the RMS Contract Manager, any agreement with a subcontractor relating to the Services, as required by the RMS Contract Manager on the terms of a novation deed reasonably satisfactory to the RMS Contract Manager;
- (b) co-operate with RMS and the RMS Contract Manager;
- (c) hand to RMS or the person nominated by the RMS Contract Manager all Contract Material except that the Service Provider may keep one copy of relevant Contract Material for bona fide audit and record keeping purposes;
- (d) as and when reasonably required by RMS or the RMS Contract Manager, meet with RMS and such other persons nominated by the RMS Contract Manager with a view to ensuring that RMS and the nominated persons have sufficient information to enable the nominated persons to perform the Services; and
- (e) in relation to any uncompleted Services:
 - (i) at the direction of the RMS Contract Manager, complete those Services at no further cost to RMS other than the Client Order Fees to which the Service Provider would otherwise be entitled in accordance with the Contract; or
 - (ii) provide such information and assistance as may be required to enable RMS or such other persons nominated by the RMS Contract Manager to complete those Services.

29.2 Transition out

The Service Provider must ensure the smooth transition of the provision of the Services from the Service Provider to the Incoming Service Provider during the Transition Out Period.

29.3 Transition Out Period

- (a) The Service Provider must, not later than 30 days before the start of the Transition Out Period, consult with the RMS Contract Manager and the Incoming Service Provider, as and when required by the RMS Contract Manager, for the purposes of establishing the scope of and requirements for the Services during the Transition Out Period.
- (b) Without limiting paragraph (a), during the Transition Out Period the Service Provider must:
 - (i) fully co-operate with RMS and the Incoming Service Provider and do all such tasks and things as may be reasonably required by RMS or the RMS Contract Manager to ensure the smooth transition of the provision of the Services from the Service Provider to the Incoming Service Provider;
 - (ii) ensure that it:
 - (A) does not cause any disruption to the activities of RMS; and

- (B) takes all steps which are necessary or required by the RMS Contract Manager to minimise inconvenience to RMS and the other users and occupiers of the Service Locations;
- (iii) ensure RMS, and the RMS Contract Manager have sufficient access to the System and information about the System as RMS or the RMS Contract Manager requires to ensure the smooth transition of the provision of the Services from the Service Provider to the Incoming Service Provider;
- (iv) provide any Data to RMS, in the form specified in the Transition Out Plan or otherwise required by RMS or the RMS Contract Manager; and
- (v) comply with the requirements of the Transition Out Plan.

29.4 Maintenance of workforce

- (a) The Service Provider must maintain a full and adequate workforce providing the Services until the last day of the Term, including those personnel nominated by RMS to work with RMS or an Incoming Service Provider.
- (b) The Service Provider must ensure that prior to expiration or the earlier termination of the Contract the Key People set out in Schedule 4 co-operate with any Incoming Service Provider to ensure a smooth transition.

30. PRIVACY

30.1 Compliance

- (a) The Service Provider must comply with all Privacy Laws in relation to Personal Information, whether or not the Service Provider is an organisation bound by the Privacy Laws.
- (b) The Service Provider must:
 - (i) collect, store, use, disclose or otherwise deal with any Personal Information as directed by the RMS Contract Manager, except to the extent that compliance with the direction would cause the Service Provider to breach a Privacy Law; and
 - (ii) provide all assistance required by the RMS Contract Manager to assist RMS in complying with its obligations under any Privacy Law.

30.2 Use and disclosure of the Contract Personal Information

- (a) The Service Provider:
 - (i) may use the Contract Personal Information, but only as is necessary for the purposes of providing the Services;

- (ii) must not directly or indirectly disclose or transfer any Contract Personal Information to, or allow access to any Contract Personal Information by, any person:
 - (A) without the RMS Contract Manager's prior written consent;
 - (B) except to those of its personnel or subcontractors who need to know the Contract Personal Information for the purposes of providing the Services, on the condition that the personnel or subcontractors will only use the Contract Personal Information for the purposes of providing the Services; or
 - (C) except as required by law;
 - (1) must not transfer any Contract Personal Information to a person (including itself) outside of Australia without the RMS Contract Manager's prior written consent, which may be granted or withheld at the RMS Contract Manager's sole and absolute discretion;
 - (2) must not purport to sell, let for hire, assign rights in or otherwise dispose of any of the Contract Personal Information, commercially exploit the Contract Personal Information, or allow any of its personnel or subcontractors to commercially exploit the Contract Personal Information; and
 - (3) must not alter the Contract Personal Information in any way, other than as required to fulfil its obligations under the Contract.
- (b) If the RMS Contract Manager consents to the Service Provider transferring Contract Personal Information to an overseas recipient in accordance with clause 30.2(a)(iii), the Service Provider:
 - (i) must ensure that the overseas recipient at all times complies with obligations in respect of the Contract Personal Information that are no less onerous than the Service Provider's obligations under this clause 30 in handling the Contract Personal Information; and
 - (ii) agrees that it will remain liable to RMS for any liability, loss, damage, cost or reasonable expense which is incurred or suffered by RMS arising out of or in connection with a breach of this clause 30 by the overseas recipient, as if any act or omission of the overseas recipient were an act or omission of the Service Provider.

30.3 Security and confidentiality of the Contract Personal Information

- (a) The Service Provider acknowledges that Contract Personal Information is Confidential Information and is subject to the confidentiality obligations in clause 31.
- (b) The Service Provider must:

- (i) ensure that Contract Personal Information is protected against misuse and loss, and from authorised access, modification or disclosure, including to:
 - (A) establish and maintain effective security measures of the highest quality as is agreed between the parties, to safeguard the Contract Personal Information from unauthorised access or use; and
 - (B) ensure that its internal operating systems only permit properly authorised persons to access the Contract Personal Information;
- (ii) promptly notify the RMS Contract Manager in writing if:
 - (A) it is aware of, or suspects, that it is, or any of its personnel or subcontractors are, in breach of this clause 30;
 - (B) it is aware of, or suspects any misuse or loss of, or any unauthorised access to or modification or disclosure of, any Contract Personal Information; or
 - (C) it is or may be required by Law to disclose any Contract Personal Information;
- (iii) if it is required by Law to disclose any Contract Personal Information:
 - (A) only disclose the Contract Personal Information to the extent required; and
 - (B) comply with any reasonable directions of the RMS Contract Manager concerning the disclosure;
- (iv) ensure that each of its personnel and subcontractors:
 - (A) are made aware of the Service Provider's obligations under this clause 30 to protect Contract Personal Information;
 - (B) keep the Contract Personal Information confidential; and
 - (C) do not use Contract Personal Information other than as required for the purposes of providing the Services; and
- (v) immediately take all steps to prevent or stop, and comply with any direction issued by RMS or RMS Contract Manager from time to time regarding, a suspected or actual breach of any Privacy Laws or any breach of confidentiality.

30.4 **Correction of Contract Personal Information**

The Service Provider must correct any Contract Personal Information promptly when notified by RMS or the RMS Contract Manager that the Contract Personal Information is not accurate, complete or up-to-date.

30.5 Records and retention of Contract Personal Information

- (a) The Service Provider must:
 - (i) establish and maintain complete, accurate and up-to-date records of its use and disclosure of Contract Personal Information, but otherwise only establish and keep records of any Contract Personal Information supplied to or acquired by it from RMS to the extent necessary to exercise its rights, and to perform its obligations under the Contract; and
 - (ii) at the RMS Contract Manager's request, promptly provide RMS with copies of the records referred to in clause 30.5(a).
- (b) The parties acknowledge and agree that clause 14.6 will apply to any Contract Personal Information which is no longer needed for the purposes of the Service Provider providing the Services.

31. CONFIDENTIALITY

31.1 Confidentiality undertaking

Where required by the RMS Contract Manager, the Service Provider must procure that all members of its staff and all subcontractors and subcontractors' staff sign a confidentiality undertaking in favour of RMS, in a form required by the RMS Contract Manager.

31.2 Obligation of confidentiality

The Service Provider must:

- (a) take all actions necessary to maintain the confidentiality of the Confidential Information;
- (b) not disclose or provide to any person the Confidential Information, except as permitted under clause 31.3;
- (c) only use or reproduce the Confidential Information for the purposes of the Contract;
- (d) not make, assist or permit any person (including its employees, subcontractors and the employees of its subcontractors) to make any unauthorised use, disclosure or reproduction of the Confidential Information;
- (e) take all steps reasonably necessary to secure the Confidential Information against theft, loss or unauthorised disclosure;
- (f) take reasonable steps to ensure that any person who has access to the Confidential Information through it or on its behalf does not use, reproduce or disclose that Confidential Information other than in accordance with the Contract;

- (g) must take reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by the Contract including diligently prosecuting any breach or threatened breach of such confidentiality obligations by a person to whom it has disclosed the Confidential Information;
- (h) on request by RMS or the RMS Contract Manager, provide and update promptly a list of all its employees, subcontractors and the employees of its subcontractors to whom the Confidential Information has been disclosed other than to persons engaged in the Services or other than as required to comply with its obligations to its shareholders or for the purpose of obtaining legal or other advice; and
- (i) ensure that its subcontractors and employees and the employees of its subcontractors comply with clauses 31.1, 31.2 and 31.3.

31.3 Permitted disclosures

The Service Provider may disclose the Confidential Information:

- (a) to persons engaged in the Services who need to know the Confidential Information for the purposes of the Contract and subject to the Service Provider taking reasonable steps to ensure that any such person is fully aware of the confidential nature of the Confidential Information before the disclosure is made;
- (b) which is required to be disclosed by Law or the listing rules of any stock exchange, provided that the Service Provider has:
 - (i) given the RMS Contract Manager prior notice where practicable; and
 - (ii) provided all assistance and co-operation which the RMS Contract Manager reasonably considers necessary for that purpose; or
- (c) in respect of which the RMS Contract Manager has given its written consent to disclosure.

31.4 Return of Confidential Information

The Service Provider agrees, at the request of the RMS Contract Manager, to return within a reasonable time any Confidential Information in all documents and other materials in any medium in the possession or under the power or control of the Service Provider or any of its representatives when the documents and other materials are no longer required for the purposes of performing its obligations or exercising its rights under the Contract.

31.5 Restrictions on public announcements

The Service Provider must not directly or indirectly make a public announcement about or comment on the contents of the Contract including any discussions between the parties without the prior written consent of the RMS Contract Manager.

32. MISCELLANEOUS

32.1 Governing law

- (a) The Contract is subject to and is governed by the Laws for the time being in force in the State of 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 the Contract, and waives any right it might have to claim that those courts are an inconvenient forum.

32.2 Assignment by Service Provider and changes in corporate structure of Service Provider

- (a) The Service Provider must not, without the prior written approval of the RMS Contract Manager and except on the terms and conditions determined in writing by the RMS Contract Manager (including as to payment of RMS' legal and other costs), assign, encumber, declare a trust over or otherwise deal with its rights under the Contract.
- (b) For the purpose of paragraph (a), a change in shareholding of the Service Provider, such that change in control occurs (whether occurring at the one time or through a series or succession of transfers or issues) or a change occurs in the corporate structure of the Service Provider which results in a person (including a company) other than the shareholders of the Service Provider at the date of the Contract:
 - (i) controlling the composition of the board of directors;
 - (ii) controlling the voting power of the board of directors or any class of shareholders or both; or
 - (iii) holding more than one half of the issued share capital (either beneficially or otherwise),will be taken to be an assignment of the Contract for the purposes of paragraph (a).
- (c) The Service Provider must give the RMS Contract Manager prior written notice of all proposed changes in its shareholding or corporate structure regardless of whether they have the effect referred to in paragraph (b).
- (d) For the purposes of clause 32.2(b), any change in beneficial or legal ownership of any equity interests (including shares or units) that are listed on a prescribed financial market will be disregarded.

32.3 Assignment and novation by RMS

- (a) RMS may assign, encumber, declare a trust over or otherwise deal with its rights under the Contract without the consent of the Service Provider, and

may disclose to any potential holder of the right, or an interest in the right, any information relating to the Contract or the Service Provider.

- (b) Without limiting clause 32.3(a), the Service Provider must if requested by RMS enter into an agreement (on terms provided by RMS) pursuant to which the Contract is novated by RMS to a third party nominated by RMS.

32.4 Waiver of conditions

- (a) Except as provided elsewhere in the Contract, the terms of the Contract will not be varied, waived, discharged or released either at law or in equity (including by way of estoppel) by any act or omission of RMS except with the prior consent in writing of RMS in each instance.
- (b) Without limiting this clause 32.4, no delay or failure by RMS or the RMS Contract Manager to exercise any rights under the Contract will constitute a waiver of those or any other rights under the Contract.

32.5 Notices

- (a) A notice, consent or other communication to be given or served under or arising out of the Contract must be in writing and emailed or delivered by hand or sent by prepaid post or facsimile, as the case may be, in accordance with this clause 32.5.
- (b) If a notice, consent or other communication is given:
 - (i) to RMS or the RMS Contract Manager, it must be addressed and forwarded to the RMS Contract Manager at the email, address or facsimile number stated in the Contract Particulars or such other relevant email, address or facsimile number as notified in writing from time to time by the RMS Contract Manager to the Service Provider; or
 - (ii) to the Service Provider, it must be addressed and forwarded to the Service Provider at the email, address or facsimile number stated in the Contract Particulars or such other email, address or facsimile number as notified in writing from time to time by the Service Provider to the RMS Contract Manager.
- (c) A notice, consent or other communication is taken to have been given:
 - (i) if sent by post, within 3 business days after posting;
 - (ii) if sent by facsimile transmission, on the date and time on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with paragraph (b); and
 - (iii) if sent by email, at the time indicated as the time and date upon which the email was sent by the computer system of the sender of the email.

32.6 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating the Contract.

- (b) The Service Provider must indemnify RMS against, and must pay RMS on demand the amount of, any duty that is payable on or in relation to the Contract.

32.7 **Entire Agreement**

- (a) Subject to paragraph (b), the Contract constitutes the entire agreement between the parties about its subject matter and supersedes all communications, negotiations, arrangements and agreements, either oral or written, made or entered into prior to the date of the Contract between the parties.
- (b) Any right that a party may have under the Contract is in addition to, and does not replace or limit, any other right that the party may have.
- (c) Without limiting the foregoing, the Tender will not form part of the Contract (except to the extent that any part of the Tender has been expressly incorporated into the Contract) and nothing in the Tender will limit, reduce or in any way modify the obligations of the parties as set out in the Contract.

32.8 **Survival**

Without otherwise limiting the effect of any provision of the Contract, clauses 12, 13.1, 15, 24, 26, 27, 28.5, 28.6, 28.7, 28.8, 29.1, 29.4, 30, 31, 32.14, 32.15 and this clause 32.8 will survive the expiry or earlier termination of the Contract.

32.9 **Severability**

Any provision of the Contract which is illegal, void or unenforceable will be ineffective to the extent only of the illegality, voidness or unenforceability without invalidating the remaining provisions of the Contract.

32.10 **Counterparts**

This document may be executed in any number of counterparts and those counterparts taken together will form one and the same instrument.

32.11 **Contract changes**

The terms of the Contract may only be varied by a deed duly executed by the parties.

32.12 **Consents**

Where the Contract contemplates that RMS or the RMS Contract Manager may agree or consent to something (however it is described), that person may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless the Contract expressly contemplates otherwise.

32.13 No relief

Neither RMS' rights, nor the Service Provider's obligations or liability, whether under the Contract or otherwise according to Law or in equity, whether before or after the expiration of the Term, will be affected or limited by:

- (a) the rights conferred upon RMS or the RMS Contract Manager by any provision of the Contract;
- (b) the failure by RMS or the RMS Contract Manager to exercise any such rights;
- (c) any direction of the RMS Contract Manager under or purported to be given under the Contract; or
- (d) without limiting paragraphs (a) - (c):
 - (i) the implementation of, and compliance with, the requirements of any plan;
 - (ii) any direction by the RMS Contract Manager concerning any plan or the Service Provider's compliance or non-compliance with any plan;
 - (iii) any audit or other monitoring by the RMS Contract Manager of the Service Provider's compliance with any plan;
 - (iv) any failure by the RMS Contract Manager, or anyone else acting on behalf of RMS, to detect any defect in any plan or failure to comply with any plan, or to otherwise enforce compliance with any plan;
 - (v) any amendment of any plan; or
 - (vi) any consent to the engagement of, or other direction by the RMS Contract Manager in respect of, any subcontractor.

32.14 Exclusion of Proportionate Liability Legislation

- (a) In determining the rights, obligations and liabilities of the parties in any claim arising under the Contract or in relation to the subject matter of the Contract:
 - (i) the operation of any Proportionate Liability Legislation which would otherwise be applicable is expressly excluded to the maximum extent permitted by Law; and
 - (ii) the indemnity provisions of the Contract will apply notwithstanding any provision in any applicable Proportionate Liability Legislation, to the maximum extent permitted by Law.
- (b) To the maximum extent permitted by Law:
 - (i) the Service Provider must not seek to apply the provisions of any Proportionate Liability Legislation in relation to any claim by RMS against the Service Provider arising under the Contract or in relation to the subject matter of the Contract; and

- (ii) if, notwithstanding clauses 32.14(a) and 32.14 (b)(i), the provisions of any Proportionate Liability Legislation are applied in relation to any claim by RMS against the Service Provider arising under the Contract or in relation to the subject matter of the Contract, the Service Provider must indemnify RMS against any loss or damage RMS is not able to recover from the Service Provider because of the operation of those provisions.
- (c) The Service Provider must ensure that all policies of liability insurance (other than statutory policies) which the Service Provider is required by the Contract to effect or maintain include cover for liabilities assumed by the parties as a result of the exclusion of the operation of any Proportionate Liability Legislation.

32.15 PPS Act

- (a) The Service Provider acknowledges that the Contract may give RMS a security interest in the Inventory to the extent that such a security interest is created in favour of RMS. The Service Provider acknowledges that RMS may register a financing statement in relation to its security interest in the Inventory. The Service Provider waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- (b) The Service Provider must promptly do anything RMS requires to ensure that any security interest RMS has in the Inventory is a perfected security interest and has priority over all other security interests.
- (c) The Service Provider must take reasonable steps to protect RMS' rights in respect of the Inventory and must not allow any person (other than RMS) to have a security interest in any of the Inventory.
- (d) To the extent that the PPS Act allows them to be excluded, the enforcement provisions in Chapter 4 of the PPS Act do not apply to any enforcement of RMS' rights in respect of any security interest in the Inventory or to the exercise of RMS' rights in respect of the Inventory.

32.16 CPI

The parties acknowledge and agree that each of the rates set out in Part A (Rates) of Schedule 2 will be adjusted by the CPI from the CPI Date as described in Part C (CPI Adjustment) of Schedule 2 (Pricing) (**CPI Adjustment**).

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.

**Executed by Roads and Maritime
Services ABN 76 236 371 088** by its
authorised delegate in the presence of:

Signature of witness

Signature of delegate

Full Name of witness (print)

Full Name of delegate (print)

Title/Role

Date

**Executed by E-Bisglobal Pty Ltd
ABN 52 092 725 570** in accordance
with section 127(1) of the *Corporations
Act 2001* (Cth) by:



Signature of Sole Director

Paul Freeman

Full name (print)

Schedule 1 Contract Particulars

Dispute Representatives: (Clause 1.1)	[REDACTED] [REDACTED]
RMS' Contract Manager: (Clause 1.1)	[REDACTED] [REDACTED] [REDACTED]
Full Service Commencement Date: (Clause 1.1)	1st December 2018
Contact details for serving notices: (Clause 32.5)	RMS: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[Signature] J.F.

[Signature] J.F.

[Signature] J.F.

[Signature] J.F.

Schedule 2 Pricing Schedule

[REDACTED]

		Price (A\$) Ex GST	Measure	Comments
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	
■	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
■	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] tag by post (envelope), or box from ETBO

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INCIDENTAL CONTRACT ITEMS				
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Part B Pre Agreed Variation

■				

Part C CPI Adjustment

1. The CPI is the All Groups 6401.0 – Consumer Price Index, Australia as published on the Australian Bureau of Statistics website from time to time (**CPI**).
2. The CPI Adjustment will apply from 1 July 2019 and each anniversary of that date (**CPI Date**). On and from each CPI Date the rates will be calculated as follows:

$$R + (R \times \text{CPI}\%) = nR$$

Where:

R means the rates set out in Part A Rates of this Schedule 2 (Pricing), as adjusted annually for CPI;

CPI% means the annual CPI percentage based on the CPI at the relevant CPI Date; and

nR means the new rates including CPI%.

Schedule 3 Statement of Requirements

Without in any way limiting the Contract, this Statement of Requirements details the Services to be performed by the Service Provider.

The following high-level activities are within the scope of the Services:

- a) warehousing of Inventory; and
- b) distribution of Inventory.

RMS E-Toll offers account holders possession of E-Tags for the purpose of recording travel on Australian toll roads so that toll charges can be charged directly to the customer's RMS E-Toll account. Distribution of E-Tags is currently offered to customers through two (2) main channels:

- a) collection by customers from Service NSW (SNSW) outlets (distribution to outlets is via the supplier's fleet or a freight carrier) - Attachment A; and
- b) distribution to retail customers.

Overview of Services

The Services include the following:

- a) Transition In Services;
- b) acceptance of the delivery of Inventory ordered by RMS;
- c) warehousing and stocktake of Inventory, in accordance with RMS' processes and requirements;
- d) entering all incoming Inventory (including reverse logistics) into the System within 48 hours of delivery;
- e) Inventory management including warranty related services, reverse logistics, disposal (including secure disposal), quarantine, recycling and re-use of Inventory;
- f) development and maintenance of reporting in relation to Inventory, performance to Service Level Indicators and industry benchmarks;
- g) management of distribution, as required by RMS;
- h) Transition Out Services; and
- i) all activities, functions and duties that are incidental to and necessary for the supply of the Services and the proper performance of the Services by the Service Provider.

Transition In Services

The Transition In Services include the following:

- a) the engagement, induction, training and mobilisation of all Key People and other necessary personnel;
- b) entering into all subcontract agreements necessary to commence the Services;
- c) reviewing existing management plans of the outgoing service provider and becoming familiar with all systems, processes and other activities of the outgoing service provider;
- d) development of Management Plans in accordance with the Contract; and

- e) without limiting the foregoing, fully co-operating with the RFP Manager, RMS and the outgoing service provider and doing all such tasks and things as may be reasonably necessary to ensure the smooth transition of the Services from the outgoing service provider to the Service Provider.

Without limiting the foregoing, the following systems, procedures, equipment are employed by the current third party logistics service provider for the following RMS requirements, and are required to be transitioned by the Service Provider as part of the Transition In Services:

Assets

- i. E-Tags;
- ii. E-Tag brackets;
- iii. Tolling Brochures & Literature; and
- iv. Tolling Customer letters, and;
- v. Associated products

Processes and Equipment

- i. Tag testing;
- ii. Cleaning and re-stocking of tags;
- iii. Taxi tag management;
- iv. Registry & Service Centre orders;
- v. Registry & Service Centre delivery;
- vi. Electronic tag activation in Stock Loader;
- vii. RMS letter template maintenance;
- viii. File Transfer by SFTG;
- ix. Client orders;
- x. Client orders (Class 4 Tag);
- xi. e-Rider special case tags;
- xii. Return to Sender (RTS);
- xiii. Backorders / suspended Orders;
- xiv. Non-compliant orders;
- xv. Delivery process;
- xvi. Rental tag preparation;
- xvii. Rental tag order management;
- xviii. Warranty tags;
- xix. Destruction;
- xx. Stock rotation;
- xxi. Stocktake;
- xxii. Inventory Management & item codes;
- xxiii. Cost centre maintenance;
- xxiv. Ordering of Bulk Tag and Auxiliary Products;
- xxv. Stocking of new products;

- xxvi. Reporting;
- xxvii. Network access;
- xxviii. Inventory Management system integration; and
- xxix. Print House import file requirements.

System Requirements

The Service Provider must provide and maintain appropriate secure systems to communicate with RMS' systems.

The System must include electronic proof of delivery and reverse logistics process for returns for all Inventory.

Electronic files

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Compatible computer operating systems

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

Client Order Receipt

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Service Continuity

The Service Provider must not introduce or implement any change which necessitates an upgrade or other change in RMS' operating processes or systems without RMS' prior written approval. There must be nil service interruption of the Services on and from the Full Service Commencement Date. The Service Provider acknowledges and agrees that ICT system integration and ongoing operation with RMS systems is considered high risk and exposes RMS to high consequences in the event of failure.

Technical Requirements to use the Client Order Fulfilment System (MailHouse)

[Redacted]

Mandatory Access Requirements

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

Data

[Redacted]

Security Compliance

The Service Provider must comply with all relevant RMS ICT security requirements, including Policy Number 104 (3rd Party Remote Access to the RMS Computer Network).

Warehousing

Warehousing Requirements

The Service Provider must provide a secure warehousing service for the receipt and warehousing of all Inventory.

The main operating warehouse must be located in NSW Metropolitan area, allowing for daily pickup of tag deliveries to RMS' E-Tag customers. The Service Provider must be able to securely store at least 6 pallets of tags (33,000) and another pallet of Associated Products at another location for the purpose of compliance with the Disaster Recovery and Business Continuity Plan. This separate location should be within 1 day's transit to allow for infrequent stock rotation.

The Service Provider must be able to provide at least 120 pallet spaces for RMS tolling Inventory including approximately 50 pallet spaces within the main operating warehouse.

Receipt and restocking of E-Tags for warranty or destruction



Client Orders

Client Orders

The categories of order fulfilment and distribution services include:

- a) Direct Fulfilment Orders;
- b) SNSW Fulfilment Orders; and
- c) Business Partner Fulfilment Orders.

Each of these categories of order is described further below.

Orders for the above categories will be received from the following sources:

- from customers through the RMS website and processed to the Service Provider by RMS Tolling Logistics Personnel ("**Direct Fulfilment Orders**");
- orders by RMS registries and/or Services NSW placed via the online portal utilised by RMS and forwarded to the Service Provider by the RMS Tolling Logistics Personnel ("**SNSW Services Fulfilment Orders**");¹ and
- orders relating to RMS arrangements with a third party for an E-Tag based tolling solution approved by RMS Tolling Logistics Personnel ("**Business Partner Fulfilment Orders**").

¹ Subject to change

RMS Tolling Logistics Personnel

RMS will, from time to time, notify the Service Provider in writing of the RMS Tolling Logistics Personnel who are authorised to give the Service Provider a Client Order under the Contract together with the limits of authorisation (delegated authority) of the relevant RMS Tolling Logistics Personnel.

The Service Provider must not act upon any Client Order unless it is authorised by RMS Tolling Logistics Personnel.

Contents of Client Orders

Each Client Order will contain the following information:

- a) the name and staff number of the RMS Tolling Logistics Personnel approving the order;
- b) the item code(s) and quantity of the products to be supplied and delivered;
- c) the name and contact details of the recipient of the package (and if applicable each item);
- d) the address for delivery of the package; and
- e) any other information which RMS considers necessary or appropriate.

The Service Provider acknowledges that cancellation or amendment to a Client Order may be made at any time by RMS before despatch without additional charge to RMS.

Lodgement of Client Orders

The Service Provider must provide facilities for the lodgement of Client Orders.

Generally Client Orders will be issued by secure electronic transmission on the SFTG. The Service Provider must, however, ensure there is capability for lodgement of Client Orders via email, telephone, fax, internet online or other emerging technologies, as such technologies emerge.

The lodgement of Client Orders and enquiries regarding such Client Orders must be available as a minimum during business hours 0900-1700 Mon-Fri.

The Service Provider must provide a dedicated telephone line and the necessary resources required to manage RMS enquiries and Client Orders.

Request for More Information

If a Client Order does not contain all the information required by 0, the Service Provider must immediately contact the relevant RMS Tolling Logistics Personnel to obtain the further information required.

Urgent Client Orders

The Service Provider must take all reasonable steps to fulfil any Client Order on an urgent basis if so requested by RMS Tolling Logistics Personnel.

Delivery Date

Upon receipt of each Client Order, where the Order has been received prior to 2pm, the Service Provider must package the products in accordance with any packaging and identification requirements set out in this Statement of Requirements or the Client Order and despatch the package within 24 hours of receiving the Client Order.

Pick, pack and ship

The Service Provider must:

- a) ensure efficient and accurate pick, pack and ship to fulfil Client Orders (multiple tag orders only);
- b) ensure that packing for distribution is in accordance with RMS' requirements which may vary by Client Order type;
- c) provide secure and appropriate packing for distribution;
- d) provide comprehensive labelling of packaging (without drawing undue attention to the fact that E-Tags are included in the package);
- e) provide timely and cost effective distribution and recovery of packages to and from point of destination as required; and
- f) implement procedures whereby urgent Client Order deadlines can be met.

Direct Fulfilment Orders

Direct Fulfilment Orders will generally be to either the customer's personal (home) or business address. Orders must also be completed within RMS' System and remote access to RMS' System is required for this purpose. For E-Tag orders, E-Tag serial numbers must be scanned and attached to the client account during order fulfilment.

The Service Provider must ensure that orders of 1 or 2 E-Tags are packaged to allow delivery to a standard mailbox to allow for standard post service (large letter). For orders requesting 3 or more E-Tags, shipment should be made in one parcel and/or by the most economic means.

Delivery is expected next business day (Sydney metropolitan), within 48 hours in regional locations (NSW - Other) and in no more than 4 business days for remote locations (Australia – Other). This applies only to eParcel deliveries. Despatch must occur on the same Business day for orders received before 10am.

Each Direct Fulfilment Order must be accompanied by the applicable Associated Products as notified by RMS to the Service Provider from time to time. These Associated Products may include:

- a) Screen wipe;
- b) Installation sheet; and
- c) Customer letter.
- d) Tag bracket (Tag orders may be accompanied by up to 2 additional brackets)

Where specified by RMS in relation to a class or classes of E-Tags, each E-Tag must be shipped inside a special anti-static bag. This requirement for the use of anti-static bags may be subject to change dependent upon the E-Tag product being despatched.

Delivery - SNSW Fulfilment Orders

[Redacted content]

Business Partner Fulfilment Orders

Business Partner Fulfilment Orders will attract an order processing fee at a per carton basis (carton = 100 tags) as well as a separate freight fee and are to be delivered as per the relevant Business Partner Fulfilment Orders. One Business Partner Fulfilment Order may contain multiple delivery addresses. Once shipped, delivery must occur by next business day (Sydney metropolitan), within 4 business days regional locations (NSW – Other) and remote locations (Australia – Other) in no more than 4 business days, unless a later time is specified by RMS.

Proof of delivery must be obtained/ensure that the addressee signs for receipt and RMS must be provided with proof of delivery on request.

Some delivery locations may be altered from time to time. RMS will notify the Service Provider of such changes.

Each Business Partner Fulfilment Order must include appropriately prepared E-Tags and the applicable Associated Products as notified by RMS to the Service Provider from time to time. These Associated Products may include, for example:

² Subject to supplier submitted solutions

- a) installation guides / sheets;
- b) business partner inventory recording sheet;
- c) anti-static shielding bags; and
- d) double sided adhesive tape.
- e) For Business Partner Fulfilment Orders, the preparation of E-Tags may include one or more of the following components and may be subject to change depending upon the type of E-Tag being supplied:
- f) Removing existing bracket from the E-Tag (or double sided tape in the case of reverse logistics) and return the bracket to general stock;
- g) Apply nominated double sided tape to the E-Tag;
- h) Prepare, print and attach removable barcode labels to each E-Tag including any additional identifiers as required (e.g. E-Tag class identifier) on the label;
- i) Package as per the relevant Business Partner Fulfilment Order in terms of quantity and numerical sequence; and
- j) [REDACTED]

[REDACTED]

Packing Slip

Each package must be accompanied by a letter or packing slip in line with the requirements detailed below.

All packing slips must contain:

- a) supplier name and contact details;
- b) name and delivery address of intended recipient;
- c) despatch date;
- d) item code and description;
- e) quantity of each item; and
- f) consignment number.

Delivery Security

The Service Provider must take all reasonable measures to ensure that all Inventory is kept secure at all times.

Deliveries must be made to the relevant delivery point during business hours. Packages are to be secured by the Service Provider at all times. Delivery vehicles are to be locked when the vehicle is unattended.

E-Rider letter and captive tag management

The E-Rider product is available to motorcycle riders who cross the Sydney Harbour Bridge or Sydney Harbour Tunnel on a regular basis. Motorcycles are not required to have a physical tag on the vehicle. However, the current System requires a tag number to be allocated to the account. Currently this requires a physical tag to be placed aside and on hold that correlates with the number associated with the tag account. The Service Provider must fulfil the following current requirements for E-Rider order fulfilment:

- a) Allocate one E-Tag to each E-Rider account;
- b) Isolate that E-Tag in a secure warehouse location; and
- c) Capture the E-Tag barcode on a print on demand letter that is then despatched via the appropriate channel.

The RMS Contract Manager may at any time and from time to time issue direct instructions to the Service Provider to carry out any Service. Other than in respect of Client Orders, the RMS Contract Managers is the only person authorised to issue such instructions.

RTS Services

The Service Provider is required to accept Return To Sender deliveries from freight carriers and report to RMS within 24 hours of receipt. The report should include Customer ID, Order number and any reason given from the freight carrier why the delivery was unsuccessful. The Service Provider is required to hold the order until instructed by RMS on how to proceed. RMS will require the order be redelivered to the same address, redelivered to an alternate address or for the order to be cancelled and the components returned to stock.

Application Data Export from current supplier

Prior to the end of the Transition In Period, RMS will provide the Service Provider with data export for all information which has been processed by the current third party logistics service provider. The data will be made up of:

- a) order data for all client orders received by current supplier with personal information removed as per the current data retention policies. This will include the order status at the time of data transfer;
- b) order component data for all client orders received;
- c) E-Tag inventory listing for all E-Tags in inventory which will include;
 - a. E-Tag type;
 - b. Carton number; and
 - c. E-Tag number; and
- d) E-Tag status for all E-Tags processed by the TCA (Tag Contract Administration System):
 - a. E-Tag number; and

- b. Current E-Tag status (Available, Dispatched, Rental Prepared, Warranty, Destruction Pending, Destroyed).

Secure destruction

The Service Provider must, as part of this contract, manage the end-of-life of tags of E-Tags returned to the Service Provider. Services include:

- a) receipt of E-Tag either by direct post from Customer or bulk return from ETBO
- b) provided reporting on demand of tags received
- c) quarantining the relevant E-Tags;
- d) identifying each serial number of the E-Tags to be destroyed;
- e) delivering the relevant E-Tags to the secure destruction location nominated by RMS;
- f) obtaining a certificate of destruction in respect of the relevant E-Tags in a form acceptable to RMS (acting reasonably); and
- g) emailing the certificate of destruction to the relevant nominated RMS staff member and maintain effective records available at request.

Associated Products

Associated Products

RMS may (in its absolute discretion, but without being under any obligation to do so) elect to use the Service Provider for the procurement of Associated Products. For the avoidance of doubt, RMS may elect to procure Associated Products other than from or through the Service Provider.

The Service Provider must not purchase Associated Products without a prior written request and approval of RMS.

All Associated Products procured by the Service Provider as part of the Services must, at all times, be of the precise manufacturer, Model/Part No and/or description, and be sourced from the supplier, nominated in the Contract or otherwise as agreed by RMS in writing.

The Service Provider must, where directed to do so by RMS, purchase and take all financial responsibility for Associated Products as part of the Services, on the following basis:

- a) RMS may continue its relationship with existing suppliers or nominate alternate suppliers and, in doing so, conduct all negotiations of price and other arrangements and then direct the Service Provider accordingly;
- b) the Service Provider will purchase the relevant Associated Products at the cost price negotiated by RMS directly with the suppliers of the Associated Products, and RMS will pay the Service Provider the relevant amount as "Reimbursable Costs" in accordance with, and subject to, clause 20 of the Contract; and
- c) no administration fee or mark-up will be applied by the Service Provider when claiming Reimbursable Costs from RMS in respect of the purchase of Associated Products.

Alternative Solution to Associated Products

The Service Provider may continue with the current Associated Products used (where required) or may suggest an alternative solution to the current Associated Products, on the basis that:

- a) no administration fee or mark-up will be applied by the Service Provider when claiming Reimbursable Costs from RMS in respect of the purchase of Associated Products;
- b) submission of original invoice for Associated Products must be included;
- c) all claims must be submitted with the original invoice for the Associated Products; and
- d) RMS holds no obligation to utilise the proposed Associated Products proposed by the Service Provider and may source the products on behalf of the Service Provider for use in distribution.

Mandatory Conditions

Compliance with standards

	Standards
1	The Service Provider's quality system must comply with AS/NZS ISO 9001:2016 Quality Management Systems – Requirements
2	The Service Provider's quality system must comply with AS/NZS ISO 9004:2011 Quality Management Systems - Guidelines to Performance Improvement
3	The Service Provider's risk management system must comply with ISO 31000:2009 risk management principles and guidelines
4	The Service Provider must comply with Policy Number 104 (3rd Party Remote Access to the RMS Computer Network)
5	The Service Provider must comply with AS/NZS 5377:2013 Collection, Storage, Transport and Treatment of end-of-life electrical and electronic equipment
6	The Service Provider must comply with PN254 Access and appropriate use of RMS IT Systems and/or IT infrastructure
7	The Service Provider must comply with Technical Note TN01406-6 RTA Secure File Transfer Gateway (SFTG)

Schedule 4 Key People

E-Bisglobal

Name	Position	Contact Details
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]

RMS

Name	Position	Contact Details
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]

Schedule 5 Service Level Indicators

Definitions

Action Plan has the meaning given in section 7.3 below.

Good Will Credit has the meaning given in section 7.5 below.

Measurement Period means the relevant period over which the Service Level Indicator will be measured, as set out in the table in section 7.2 below.

Rebate means the amount calculated in accordance with section 7.4 below.

Service Level Failure has the meaning given in section 7.3 below.

Target means the relevant target performance against each Service Level Indicator, as set out in the table in section 7.2 below.

Service Level Indicators

In respect of the Service Level Indicators, the Service Provider must:

- a) use measurement and monitoring tools and procedures to measure the Service Provider's performance accurately and promptly and report the Service Provider's performance against the Service Level Indicators; and
- b) provide Service Level Indicator reporting to RMS on a monthly and quarterly basis.

	Service Level Indicator	Required Performance Level	Measurement Period	Target
1	Accurate Client Order fulfilment	<ul style="list-style-type: none"> For each Client Order, all order components are included and are accurate and complete; and All Client Orders are adequately packaged. 	Per month	Maximum 1 Incident Measured Per order
2	Direct Fulfilment Orders	All Direct Fulfilment Orders received by the Service Provider before 10am, are dispatched on the same Business Day	Per Month	Maximum 1 Incident Measured Per order
3	Ensured Delivery for corporate business partner and NSW orders	<ul style="list-style-type: none"> POD (Proof of Delivery) signature required <p>If the order is received before 2pm on any Business Day, delivery shall occur:</p> <p>Sydney Metropolitan area - Next Business Day; Regional locations (NSW - Other) - Within 2 Business Days; Remote locations (Australia - Other) - Within 4 Business Days.</p>	Per Month	Maximum 1 Incident Measured Per order
4	Reports as listed in reporting matrix	Reporting provided is accurate, complete and on time as per Schedule [9].	As per reporting schedule	100%
5	Business Partners Fulfilment Orders (Rental Car / Bus Partner)	All Business Partner Fulfilment Orders are completed in accordance with all customer requirements, including labelling, condition, preparation and allocation	Per Month	100%
6	Continuity of ICT system operation (Mon-Fri 8am-6pm)	Available to RMS during Business Hours	Per Month	No more than 2 hours of unavailability
7	General enquiry response time	The Service Provider responds to RMS' enquiries on the same Business Day	Per Month	No more than 1 incident per month
8	Appropriate stock management	<ul style="list-style-type: none"> Levels of Inventory held are consistent with the required level in the Disaster Recovery and Business Continuity Plan; Appropriate environment maintained for storage of E-Tags and other stock; and Proof of adherence of the above two points is available on request. 	Per Month	100%
9	Reporting on incoming stock	Per Order Within 4 Business Days	Per Month	100%
Quarterly SLI's				
10	Stock Accuracy	Level of accuracy of Inventory at stocktake	Per Quarter	100%

	E-Tags	(as scheduled or ad-hoc when requested by RMS)		
	Stock Accuracy Other Inventory	Level of accuracy of Inventory at stocktake (as scheduled or ad-hoc when requested by RMS)	Per Quarter	Min 98%
Incidental SLI's				
12		<ul style="list-style-type: none"> • Full compliance with RCC returned tags procedure; • Full compliance with Customer returned E-Tags procedure set out in the Statement of Requirements; and • Accurate and timely sorting and return of E-Tags to E-Tag warehouse set out in the Statement of Requirements 	Per Month	No more than 1 incident per month

Service Level Failure

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rebate

- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

Schedule 6 Statutory Declaration as to Payment

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

The Consultant is both a "head contractor" in terms of the Building and Construction Industry Security of Payment Act 1999, and a "subcontractor" in terms of the Workers Compensation Act 1987, Payroll Tax Act 2007, and Industrial Relations Act 1996, and makes relevant statements below accordingly.

This Statement must be signed by the Consultant (or by a person who is authorised, or held out as being authorised, to sign the statement by the Consultant).

Relevant legislation includes Workers Compensation Act 1987, s175B, Payroll Tax Act 2007, Schedule 2 Part 5, Industrial Relations Act 1996 s127, and Building and Construction Industry Security of Payment Regulation 2008 cl 4A

Information, including Notes, Period of Statement, Retention, and Offences under various Acts are included at the end of this Schedule.

SUBCONTRACTOR'S STATEMENT

Subcontractor _____ ABN: _____

(Business name)

of _____

(Address of subcontractor)

(NOTE 2)

has entered into a contract with _____

(Business name of principal contractor)

Contract number / identified _____

(NOTE 3)

(NOTE 4)

This statement applies for work between: ____ / ____ / ____ and ____ / ____ / ____ inclusive,

(NOTE 5)

subject of the payment claim dated: ____ / ____ / ____

I,a director or a person authorised by the Consultant on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Consultant has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with (b) to (h) 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 (e),to (h) below. You must mark 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 Consultant is required to be registered as an employer under the Payroll Tax Act 2007, the Consultant has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement. (NOTE 9)
- (e) Where the Consultant is also a principal contractor to subcontracts in connection with the work, the Consultant 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) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(g) Signature Full name

(h) 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.

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

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, section 127 of the Industrial Relation Act 1996 and sections 13(7) and 13(9) of the Building and Construction Industry Security of Payment Act 1999. 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 1987 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.

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or NSW Industrial Relations, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

Schedule 7 Form of option notice

Date:

To: **E-Bisglobal Pty Ltd ABN 52 092 725 570 ("Service Provider")**

Attention: **Sean Havard**

Roads and Maritime Services (ABN **[#INSERT]**) ("**RMS**") exercise the option granted under clause **[2.2/2.3]** *[delete as applicable]* of the contract between RMS and the Service Provider titled "Electronic Transponder Logistics and Inventory Managed Services Contract" dated **[#INSERT DATE]** to extend the term of that contract in accordance with that clause.

[Insert execution block]