



ResourceCo Material Solutions Pty Ltd

Transport Services Terms and Conditions

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Transport Services Terms and Conditions

Unless RMS and the Service Provider agree otherwise expressly in writing, these RMS Terms and Conditions shall apply to all services provided by the Service Provider to RMS.

1. Definitions and interpretation clauses

1.1 Definitions

In these Terms and Conditions:

Accredited Service Provider	means a Service Provider who has been invited by RMS to be accredited and who has completed RMS's accreditation application and approval process and has received confirmation in writing from RMS that it is an Accredited Service Provider.
Accreditation Standards	means the contractor accreditation application requirements and accreditation policies, procedures and standards issued by RMS from time to time;
Assignment	means an offer by RMS to the Service Provider to accept the supply of Services from the Service Provider in accordance with these Terms and Conditions and the terms set out in the offer.
Business Day	means a day on which banks are open for business in state or territory in which the relevant Services are provided excluding a Saturday, Sunday or public holiday in that city.
Business Hours	means the hours of 9.00 am to 5.00 pm on a Business Day.
Commencement Date	means the date that the agreement between the parties commences..

Confidential Information means:

- (a) the terms of the agreement between the parties; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Body Corporate of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with these Terms and Conditions,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);
- (d) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

Contaminant

means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Sites or the surrounding Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) not comply with any Environmental Law; or
- (c) not satisfy the contamination criteria or standards published or adopted by the relevant environmental authority.

Defective Services

means Services which are not in conformity with the Assignment or these Terms and Conditions or which are otherwise, in the reasonable opinion of RMS, unsatisfactory to RMS.

Disclosing Party	has the meaning given in clause 22.2.
Docket	means any document issued by RMS or any RMS customer to the Service Provider specifying the Services, or which the Service Provider is required to complete and return to RMS upon completion of the Services.
Environment	means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.
Environmental Law	means a law relating to the Environment, including any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, soil or groundwater contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades, or any other aspect of protection of the Environment or person or property.
Government Agency	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
GST	means goods and services tax and any replacement or similar tax
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Health and Safety Legislation	means all applicable occupational health and safety, environmental protection, dangerous goods and electricity safety Laws, together with any directions on safety or notices issued by any relevant authority or any code of practice or compliance code, appropriate or relevant to the supply of the Services.

Health and Safety Requirements

means any and all directions, instructions, requests or requirements (including Site Safety Requirements) made by:

- (a) the RMS; or
- (b) the person with management or control of a Site,

relevant to or associated with or necessary for compliance by the Service Provider or RMS; with Health and Safety Legislation and including:

- (c) any such matters of which the Service Provider has been informed by RMS or the entity with management or control of a Site orally or in writing; and
- (d) the safety management system obligations set out in clause 12(a).

Heavy Vehicle

means a vehicle defined as a "heavy vehicle" or a "fatigue related heavy vehicle" by sections 6 and 7 of the Heavy Vehicle National Law Act 2012 (QLD).

Heavy Vehicle Laws

means all applicable laws and standards relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including laws and rules relating to fatigue management, driving under the influence of drugs or alcohol and speeding) for heavy vehicles, including but not limited to the Heavy Vehicle National Law Act 2012 (Qld), Heavy Vehicle National Law Application Act 2013 (Vic), Heavy Vehicle National Law (NSW) (2013 No 42), Heavy Vehicle National Law (ACT) Act 2013, Heavy Vehicle National Law (SA) Act 2013, Road Traffic (Administration Act 2008 (WA), Road Traffic (Vehicles) Act 2012 (WA) in force as at the date of this Contract and as amended from time to time

Insolvency Event

means the happening of any of these events:

- (a) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;

- (b) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
- (c) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (f) a body corporate is or states that it is insolvent;
- (g) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand;
- (h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*;
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (j) a body corporate ceases to carry on business; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property Rights

means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) confidential information and trade secrets;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act* 1989 (Cth).

Law

means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any government agency;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the supply of the Services under an Assignment or any agreement between the parties; and
- (c) all other laws from which legal rights and obligations may arise.

Loss

means loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, claim for indemnity, demand or liability.

Moral Rights

means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, rights to alter or delete all or part of the works, rights to use the works or an adaptation of the works and rights of a similar nature conferred by statute anywhere in the world

Price	means the price for the Services payable by RMS to the Service Provider calculated at the rate stated in the Assignment or as otherwise agreed between the parties.
Related Body Corporate	has the meaning given to that term in the <i>Corporations Act 2001 (Cth)</i> .
Representatives	means officers, employees, agents, representatives, contractors or subcontractors of the relevant party.
RMS	means ResourceCo Material Solution Pty Ltd (ACN 068 316 687) of Level 3, 6 Nexus Court, Mulgrave VICTORIA 3170.
RMS Background Intellectual Property Rights	means all Intellectual Property Rights owned or used by RMS prior to the date of the Assignment or any agreement between the parties.
Service Provider Background Intellectual Property Rights	means all Intellectual Property Rights owned or used by the Service Provider prior to the date of the agreement between the parties.
Services	means the transportation of material using heavy vehicles as directed by RMS by way of an Assignment or otherwise.
Service Provider	means the person or company that agrees to provide the Services.
Site	means any site or location that the Service Provider is required to enter during the course of providing the Services.
Site Controller	Site Controller means any person or entity having power or authority to exercise control over any site that the Service Provider is required to attend in the course of performing an Assignment and performing the Services.
Site Safety Requirements	means safety requirements at or associated with any Site (as are imposed or required by any person) which are related to health and safety.
Term	means the period of the agreement between the parties, if the period is not expressly agreed the agreement shall continue until all of the relevant services and obligations have been performed.
Termination Date	means the date any agreement is validly terminated by a party in accordance with these Terms and Conditions;

Termination Event means any event specified in clause 16.1.

1.2 Interpretation

In these Terms and Conditions, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of these Terms and Conditions;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in these Terms and Conditions have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, these Terms and Conditions and a reference to these Terms and Conditions include any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including these Terms and Conditions) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and a reference to an Assignment or agreement other than the Assignment or agreement governed by these Terms and Conditions includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (j) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (k) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (l) a provision of these Terms and Conditions may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms and Conditions or the preparation or proposal of that provision;

- (m) a reference to a body, other than a party to these Terms and Conditions (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) specifying anything in these Terms and Conditions after the words 'include', 'including', 'for example', 'such as' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (q) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day; and
- (r) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

1.3 Interpretation of inclusive expressions

Specifying anything in these Terms and Conditions after the words 'include' or 'for example' or similar expression does not limit what else is included.

1.4 Business Day

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Agreement Components

The agreement between RMS and the Service Provider shall include the Terms and Conditions and any Assignment accepted by the Service Provider or contract executed by the Service Provider and RMS.

2. Assignment Notification Procedure

2.1 Assignments

- (a) RMS may issue an Assignment offering the Service Provider the opportunity to perform services in accordance with the terms of these Terms and Conditions.

2.2 Assignment notification process

- (a) An Assignment shall be communicated to the Service Provider by the following means:
 - (i) Text message;
 - (ii) Email;
 - (iii) Other means agreed between the parties.
- (b) An Assignment notification shall include:
 - (i) A brief description of the Services required;
 - (ii) The date and time when the Services are required; and
 - (iii) The rates payable by RMS for the Services required.
- (c) An Assignment remains open for acceptance until:
 - (i) it is accepted by the Service Provider; or
 - (ii) it is accepted by an alternative service provider; or
 - (iii) it is withdrawn by RMS; or
 - (iv) 24 hours elapses from the time the Assignment was communicated.which ever occurs first.

2.3 No minimum volume

- (a) The Service Provider is not entitled to receive:
 - (i) a minimum number or frequency of Assignments; or
 - (ii) a minimum amount of fees or income for the provision of Services over any given period.

2.4 Acceptance of Assignment and terms

- (a) On acceptance of an Assignment, the Service Provider agrees to provide the Services in accordance with the terms of the Assignment and these Terms and Conditions.
- (b) Each Assignment that is accepted by the Service Provider is a separate contract between the Parties.
- (c) If there is any inconsistency between these Terms and Conditions and the terms of an Assignment, these Terms and Conditions will prevail to the extent of any inconsistency.

3. Terms applicable to each Assignment

3.1 Other terms and conditions not applicable

The provisions of these Terms and Conditions apply to all Services performed by the Service Provider (and any other services provided by the Service Provider related to or provided in connection with the Services for which no written contract has been executed by the parties) and override any purchase orders, invoices or other documentation exchanged between the parties to the extent of any inconsistency unless any such document expressly provides that it overrides this contract by name.

3.2 Non-exclusive arrangement

These Terms and Conditions do not prevent RMS from entering into arrangements or agreements with third parties for the supply of services equivalent or similar to the Services.

3.3 Suspension of Services

RMS may suspend performance of all or any part of an Assignment and the Services any time on written notice to the Service Provider. In such circumstances, RMS will not be liable to the Service Provider for any cost, expense, loss or damage in any way, including loss of profits or income.

4. Services

4.1 Services to be provided

- (a) The Service Provider agrees to provide the Services to RMS.
- (b) The Services to be provided following the acceptance of an Assignment are subject to the terms of the Assignment or any agreement of the parties.

4.2 Document management

- (a) RMS may require the Service Provider to manage and issue certain documentation confirming that the Services have been provided in accordance with an Assignment or agreement including, but not limited to;
 - (i) contractor dockets;
 - (ii) weighbridge dockets; and
 - (iii) EPA dockets.
- (b) Service Provider must ensure that all Dockets and any information required pursuant to clause (a) are:
 - (i) completed clearly and accurately;

- (ii) completed honestly;
- (iii) maintained in good order and condition; and
- (iv) promptly submitted to RMS at the conclusion of the provision of the Services in respect of each Assignment.

4.3 **Protection of the RMS brand and goodwill**

- (a) The Service Provider will ensure that:
 - (i) any person who provides or performs any part of the Services maintains a professional appearance and manner that will reflect favourably on RMS at all times;
 - (ii) any vehicle or equipment used to perform any part of the Services is clean, tidy, well presented, in good working order such that it will reflect favourable on RMS at all times;
 - (iii) the Service Provider and its personnel and subcontractors do not use the brand name 'ResourceCo Material Solutions', or any associated registered or unregistered trademark other than in the course of the provision of the Services strictly in accordance with these Terms and Conditions and any reasonable direction of RMS.

4.4 **Inability to perform the services**

- (a) If at any time during an Assignment or any agreement between the parties the Service Provider is unable to perform the Services in whole or in part the Service provider shall immediately notify RMS of such inability and in such circumstances:
 - (i) RMS shall arrange for an alternative Service Provider to perform the Services; and
 - (ii) the Service Provider will indemnify RMS in respect of any increase in the cost of obtaining the Services associated with the Service Provider's inability to perform in whole or in part.

5. **Service standards**

5.1 **Service standards generally**

The Service Provider must provide the Services:

- (a) in accordance with the relevant Assignment;
- (b) in accordance with these Terms and Conditions;

- (c) with due care and skill;
- (d) in a proper, conscientious, expeditious, professional, efficient and cost-effective manner using that standard of skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services in Australia;
- (e) in compliance with:
 - (i) all Laws relevant to the provision of the Services;
 - (ii) the Heavy Vehicle Laws;
 - (iii) RMS's policies and procedures notified to the Service Provider from time to time;
 - (iv) the reasonable directions of RMS; and
 - (v) the reasonable direction of the Site Controller
- (f) to the reasonable satisfaction of RMS; and
- (g) in a manner that promotes the interests of RMS.

5.2 Standards of vehicles used for the Services

- (a) This clause 5.2 applies to all vehicles that the Service Provider may use to carry out an Assignment.
- (b) The Service provider will:
 - (i) keep the vehicle properly maintained and serviced, registered and comprehensively insured at all relevant times;
 - (ii) keep appropriate records of all maintenance, repairs and servicing of the vehicle and provide these to RMS within seven days of RMS's written request;
 - (iii) operate the vehicle in accordance with all relevant statutory requirements in every jurisdiction in which the vehicle may be operated, kept or used;
 - (iv) ensure that every person who may drive or operate the vehicle holds and keeps current a full licence of the required class;
 - (v) not operate, or allow any other person to operate the vehicle while under the influence of alcohol or drugs or in breach of any Law or limit with regard to the concentration of alcohol or any other drug;
 - (vi) comply with any reasonable RMS or Site Controller drug and alcohol testing programs; and

- (vii) maintains for the Term all EPA licences and any other licences, permits or approvals required by a relevant authority to enable the use of the vehicle for the Services.
- (c) The Service Provider is solely liable and responsible for the costs of the vehicle including but not limited to:
 - (i) all fuel and lubricants, all other day to day running expenses, repairs, servicing and maintenance; and
 - (ii) insurance, registration, tax and licensing in relation to the vehicle and its drivers.

5.3 **RMS approval of drivers**

- (a) The Service Provider shall ensure that all of the Service Provider's Representatives that are to provide the Services are:
 - (i) permitted by Law to be employed or contracted by the Service Provider and perform the Services including but not limited to holding and maintaining for the Term any necessary visa, licence, permission or authority;
 - (ii) appropriately qualified to provide the Services; and
 - (iii) are regularly assessed by the Service Provider to ensure compliance with this clause 5.3(a).
- (b) No Representative of the Service Provider shall be permitted to supply the Services without the prior approval of RMS (not to be unreasonable withheld).
- (c) RMS may require the Service Provider's Representatives to carry out reasonable third party or RMS assessments and training at the Service Provider's time and cost.

5.4 **Fit for purpose**

The Service Provider must ensure that the Services that it provides to RMS pursuant to these Terms and Conditions are fit for the purposes for which those types of Services are commonly bought and fit for the particular purposes that RMS communicates to the Service Provider.

5.5 **Time is of the essence**

The Service Provider acknowledges that time is of the essence under these Terms and Conditions and any Assignment issued hereunder and that a breach of any time obligation under these Terms and Conditions by the Service Provider will be deemed to be a breach of a material obligation by the Service Provider.

5.6 Australian Consumer Law Consumer Guarantees

These Terms and Conditions are deemed to include all consumer guarantees that RMS would be entitled to as set out in the Australian Consumer Law as if RMS were a 'consumer' within the meaning of section 3 of the Australian Consumer Law. Such consumer guarantees will be incorporated into these Terms and Conditions as warranties given by the Service Provider to RMS.

6. Service standard required of Accredited Service Provider

6.1 Accreditation

- (a) If a Service Provider is an Accredited Service Provider, then the Service Provider must at all times , comply with the Accreditation Standards.
- (b) If a Service Provider is an Accredited Service Provider, as a condition of being offered an Assignment pursuant to these Terms and Conditions, the Service Provider, shall at its cost, upon the request of RMS:
 - (i) paint, label or otherwise accessorise the vehicle with any trademarks, marks, names or other information reasonably required by RMS; and
 - (ii) install equipment on the vehicle reasonably required to ensure compliance with Laws or to meet the requirements of an Assignment including but not limited to scales, GPS units, dashcams and speed limiters.
- (c) Without limiting RMS's rights under these Terms and Conditions, in the event of a breach of the Accreditation Standards by an Accredited Service Provider, RMS may at its election (acting reasonably):
 - (i) direct the Accredited Service Provider to take particular actions or cease particular conduct to ensure that the Accredited Service Provider is in compliance with the Accreditation Standards; or
 - (ii) revoke the Accredited Service Providers accreditation status; or
 - (iii) take any other disciplinary action contemplated by the Accreditation Standards.

7. Sites

The Service Provider:

- (a) may only gain access to and enter and remain on a Site as specified in an Assignment or as directed by RMS or the Site Controller;
- (b) enters the Site at its own risk;

- (c) must ensure that it and its Representatives complete all required site inductions prior to entering the Site;
- (d) must not, in delivering the Services, disrupt any activities on the Site and must ensure that it and its Representatives:
 - (i) take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles;
 - (iii) comply with any direction of RMS or the Site Controller with respect to the movement and parking of vehicles on or around the Site;
 - (iv) do not undertake any activity which may result in a Contaminant being introduced to the Site, or use substances which may give rise to or become a Contaminant at any time; and
 - (v) prevent nuisance and unnecessary noise and disturbance;
- (e) must ensure that the Site is kept secure, clean, orderly and fit for immediate use;
- (f) must ensure the Site is left in the same condition as it when the Service Provider entered it, fair wear and tear excepted; and
- (g) must notify RMS of any potential breach of any Environmental Law.

8. RMS Property

8.1 RMS property

Any documents, plans, equipment, property or items that RMS provides to the Service Provider to enable the Service Provider to comply with its obligations under these Terms and Conditions:

- (a) will at all times remain the property of RMS;
- (b) must only be used by the Service Provider for the purposes of fulfilling its obligations under these Terms and Conditions; and
- (c) must be returned to RMS on the Termination Date in the same condition as it was when provided by RMS, fair wear and tear excepted.

8.2 Loss or damage to RMS property

- (a) The Service Provider is responsible and must indemnify RMS for any loss or damage to the Sites, RMS's premises or RMS property caused or contributed to by the Service Provider.

- (b) RMS has the right to set off payment on any invoice against any amounts under paragraph (a) until the Service Provider complies with its obligations under this clause 8.2.
- (c) The Service Provider must immediately notify RMS of any accident, injury, property damage or Contaminant which occurs during provision of, or associated with, the Services. The Service Provider must, within two days of any such incident, provide a written report to RMS giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

9. Warranties

9.1 Service warranty by Service Provider

The Service Provider warrants to RMS that:

- (a) the Services will be in conformity with these Terms and Conditions and the Assignment or other agreement between the parties (including clause 4.2);
- (b) its Representatives are all competent and possess the necessary skill, qualifications, licences, authorities and experience to properly perform the Services in accordance with the terms of these Terms and Conditions (and have been assessed by the Service Provider as such); and
- (c) it is an experienced provider of services similar to the Services, has fully familiarised itself with the Services required by RMS and is confident that it can provide the Services.

9.2 RMS rights

- (a) Without limiting any liability set out in these Terms and Conditions or otherwise that the Service Provider may have to RMS, if RMS determines that any of the Services provided are Defective Services, RMS may, at its option:
 - (i) reject the Defective Services by notifying the Service Provider that it is rejecting them; and/or
 - (ii) request the Service Provider to re-perform or make good the Defective Services.
- (b) At RMS's option and request, the Service Provider must:
 - (i) refund to RMS any payments made by RMS in respect of any Defective Services that it rejects;
 - (ii) re-perform or make good, at no cost to RMS, any Defective Services that RMS rejects; or

- (iii) reimburse RMS for any expenses RMS incurs in making good any Defective Services on the Service Provider's behalf.
- (c) The remedies provided in this clause 9.2 do not exclude any other remedies available to RMS by law.

9.3 **Other warranties by Service Provider**

The Service Provider warrants to RMS that:

- (a) the provision of the Services by the Service Provider to RMS will not infringe any right of any third party (including any Intellectual Property Right) or Law;
- (b) it is not under any obligation or restriction which would in any way conflict with the Services and the Service Provider will not assume any such obligation or restriction during the Term;
- (c) it will act in a safe manner, in accordance with all Laws and in accordance with these Terms and Conditions
- (d) it will ensure the accuracy and completeness of all information provided to RMS for the purpose of these Terms and Conditions; and
- (e) it is not a trustee of a trust.

9.4 **Mutual warranties**

Each party warrants to the other party that it has the power to execute, deliver and perform its obligations under these Terms and Conditions and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

9.5 **Reliance on warranties**

The Service Provider acknowledges that RMS enters into an agreement in reliance on the warranties given by the Service Provider in these Terms and Conditions.

10. Calculation of Price

10.1 **Calculation of Price**

- (a) The price payable by RMS to the Service Provider for the Services supplied by the Service Provider shall be determined in accordance with the terms of the Assignment or other agreement between the parties.
- (b) The price payable for each Assignment will be capped at the price payable for the maximum legally permitted load for the vehicle used.
- (c) RMS will not pay the price in respect of any material loaded in excess of the maximum amount permitted by Law for the vehicle used.

10.2 Components of the Price

- (a) Unless otherwise stated in these Terms and Conditions, the price is inclusive of:
 - (i) all costs incurred by the Service Provider in providing the Services, including the cost of all labour necessary to provide the Services;
 - (ii) the cost of all, fuel, parts, supplies and consumables necessary (if any) to carry out the Services; and
 - (iii) all federal, state and territory taxes and duties (other than GST).
- (b) The price excludes GST.

11. Payment of Price

11.1 Invoicing and payment

- (a) RMS will issue a valid recipient created tax invoice (**RCTI**), failing which RMS will direct the Service Provider to issue a valid tax invoice, in respect of each Assignment within 5 Business Days of the end of the week in which the Assignment is completed.
- (b) The invoice must contain all details or information requested by RMS from time to time.
- (c) RMS' obligation to pay the price is conditional on RMS receiving documentary evidence in the form of a Docket executed by the relevant customer evidencing that the relevant services have been performed by the Service Provider.
- (d) Subject to the Service Provider not being in breach of these Terms and Conditions, RMS will pay the invoiced amount due to the Service Provider (less any set off or contractual deduction) for the Assignment within 30 days of the date of a valid invoice for the Assignment.
- (e) The Service Provider must provide RMS with bank account details into which payments by RMS may be made but RMS may make payment to the Service Provider by what ever reasonable method RMS may choose.

11.2 RMS to issue recipient created tax invoices

- (a) The Service Provider and RMS have agreed that RMS may issue RCTI's to the Service Provider for the supply of Services pursuant to these Terms and Conditions.
- (b) The Service Provider will supply to RMS with the Service Provider's Australian Business Number and all other information which is required to enable RMS to issue the RCTI on behalf of the Service Provider.

- (c) The Service Provider will not issue a tax invoice to RMS unless directed by RMS to do so. If the Service Provider is directed to issue a tax invoice to RMS, then it must do so.
- (d) The Service Provider warrants that it is registered for GST when it enters into an agreement with RMS and that it will notify RMS if it ceases to be registered for GST.
- (e) RMS acknowledges that it is registered for GST when it enters into an agreement with the Service Provider and that it will notify the Service Provider if it ceases to be registered for GST or if it ceases to comply with any of the requirements relating to the issue to RCTIs.

11.3 Payments on account

Any payments made by RMS are taken to be payments on account only and will not evidence acceptance by RMS of any of the Services.

12. Work Health & Safety

- (a) If requested by RMS the Service Provider must provide evidence to RMS of a safety management system which complies with, or includes provisions which are of at least the same standard as, the reasonable safety management requirements of RMS as notified to the Service Provider from time to time.
- (b) The Service Provider warrants that it is familiar with and has the capability and resources to comply with all relevant Health and Safety Legislation.
- (c) The Service Provider must comply with, and ensure that any of the Service Provider's Representatives involved with supply of the Services comply with all:
 - (i) Health and Safety Legislation;
 - (ii) Site Safety Requirements;
 - (iii) Health and Safety Requirements;
 - (iv) Environmental Laws; and
 - (v) reasonable directions of RMS or the Site Controller with regard to compliance with this clause 12(c).
- (d) Any Policies, so far as they relate to occupational health and safety, are intended to assist the Service Provider to supply the Services in accordance with occupational health and safety standards, but in no way relieve the obligations of the Service Provider to comply with all relevant Health and Safety Legislation.

- (e) Where Health and Safety Legislation provides for the appointment or nomination of a Principal Contractor (as that term is defined in the relevant legislation), the Service Provider must:
 - (i) accept nomination or appointment as Principal Contractor, at the discretion of, RMS; and
 - (ii) comply with all obligations imposed by that Health and Safety Legislation on a Principal Contractor.
- (f) The Service Provider must:
 - (i) co-operate with any other contractors or other persons engaged in or associated with the Services or other work at a Site in order to maintain uniform safety and industrial practices;
 - (ii) co-operate with RMS to enable RMS to comply with its obligations under all relevant Health and Safety Legislation including participation in toolbox meetings and safety communications;
 - (iii) immediately advise RMS in writing of any act, fact or circumstance associated with the activities of the Service Provider or any other person relevant to the ability of the Service Provider to supply the Services in a manner that is safe and without risks to health.
- (g) The Service Provider must, prior to the commencement of any Assignment, undertake an assessment of the risks associated with the Services and identify and implement appropriate measures to control all such risks. Details of the site risk assessment and evidence of implementation of adequate risk control measures must be provided to RMS upon and in accordance with any reasonable request by or on behalf of RMS.
- (h) The Service Provider must immediately notify RMS of any accident, injury, property damage or Contaminant which occurs during supply of the Services. The Service Provider must, within two days of any such incident, provide a written report to RMS giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.
- (i) For the avoidance of doubt, any breach by the Service Provider of any part of this clause 12 will give rise to an immediate right on the part of RMS to terminate any Assignment on written notice to the Service Provider.
- (j) Notwithstanding clause 12(h), if, in the reasonable opinion of RMS, any breach of these Terms and Conditions or action of the Service Provider exposes a person to immediate risk of injury, or the Environment to risk of damage or contamination, RMS may immediately suspend or terminate the relevant Assignment or any agreement between the parties on written notice to the Service Provider.

13. Heavy Vehicle Laws - Chain of Responsibility

13.1 Service Provider warranties

The Service Provider agrees and warrants that it:

- (a) is familiar with and understands the obligations placed upon it and its Representatives by the application of the Heavy Vehicle Laws; and
- (b) has the capability and resources and has in place suitable systems, procedures, training programs and audits, to ensure that the Service Provider and its Representatives discharge their obligations under, and comply with the Heavy Vehicle Laws when providing the Services.
- (c) will comply (and ensure that its Representatives comply) with all Heavy Vehicle Laws applicable to the provision of the Services.
- (d) will ensure, so far as is reasonably practicable, the safety of the Service Provider's transport activities.

13.2 Eliminating heavy vehicle risk

The Service Provider must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the Service Provider's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of a Heavy Vehicle to contravene a Vehicle Law;
 - (ii) another person, including another party in the chain of responsibility, to contravene a Heavy Vehicle Law;
 - (iii) the driver of a Heavy Vehicle to exceed a speed limit applying to the driver and/or the Vehicle;
 - (iv) the driver of a Heavy Vehicle to drive while impaired by fatigue or in breach of the driver's work/rest hours option; or
 - (v) a breach of the mass, dimension and load restraint requirements for a Heavy Vehicle.
- (c) Ensure that the Service Provider and its Representatives comply with all applicable OEM specifications, mass management accreditation scheme documentation, Commonwealth Gazette notices, NHVR Common Heavy Freight Vehicle Configurations, industry truck charts, mass, dimension and route requirements contained in exemption notices, permits or PBS vehicle approvals for authorised (mass) limits and/or authorised dimensions. Such

notices and permits may also include extra conditions that must be followed to control safety risks with over-size or over-mass loads.

13.3 Notifications of Vehicle Law breaches

- (a) If the Service Provider is not able to perform the Services without a breach of a Vehicle Law occurring, the Service Provider must notify RMS immediately and must not breach, or permit a breach, or continue to breach, the Vehicle Law.
- (b) The Service Provider must immediately notify RMS if the Service Provider (or its Representatives) is subject to a vehicle or premises inspection, document request, investigation, an enforceable undertaking or other direction by the National Heavy Vehicle Regulator (**NHVR**) or any other relevant authority or a prosecution or penalty notice for breach of a Vehicle Law (not including parking fines).

13.4 Safety Management System

- (a) Prior to commencing the Services, the Service Provider shall identify and record the mass requirements (such as tare, gross and axle weights, widths and lengths) that apply to each vehicle or combination and communicate these to RMS. The mass net payload of the vehicle (or combination) must also be communicated to RMS.
- (b) The Service Provider must implement and actively manage throughout the term of the Assignment or any agreement between the parties an effective safety management system including a mass, speed and fatigue management and compliance program which complies with and ensures ongoing compliance with, all the Heavy Vehicle Laws by the Service Provider (and its Representatives and vehicles)(**Safety Management System**).
- (c) Without limiting the Service Provider's obligations under clause 13, to the extent that the Service Provider drives, operates, controls, schedules, leases or owns a Heavy Vehicle, the Safety Management System must include systems to ensure:
 - (i) HR, Induction, medical, training and assessment records for all drivers, including competency for the vehicle configuration
 - (ii) Communication of RMS policies and procedures including training records as requested
 - (iii) training and assessment of drivers regarding their mass and dimension obligations and requirements;
 - (iv) the accuracy of the load weights and load positioning;
 - (v) compliance with applicable gross vehicle mass and axle weights;
 - (vi) the proper restraint of loads;

- (vii) an appropriate driving hours and rest break policy;
 - (viii) regular auditing of drivers' log books to ensure drivers are complying with log book requirements;
 - (ix) consultation with drivers about their driving hours, rest breaks, sleep or whether they are getting necessary rest;
 - (x) a person providing the Services does not drive a vehicle on a road while the person is:
 - (A) impaired by fatigue;
 - (B) in breach of the driver's work/rest hours option;
 - (C) under the influence of drugs or alcohol; and/or
 - (D) is otherwise unfit for that task.
 - (xi) driving rosters are prepared to take into account the effects of fatigue, shift-work, circadian rhythms, sleep deprivation and extended hours of work;
 - (xii) all drivers are adequately trained in fatigue management and chain of responsibility compliance;
 - (xiii) all drivers are adequately supervised to ensure compliance with fatigue management and chain of responsibility obligations;
 - (xiv) all drivers are tested regularly for drugs and alcohol;
 - (xv) proper records are kept in respect of required medical examinations and training for drivers;
 - (xvi) drivers to not exceed speed limits;
 - (xvii) speed limiters are functioning effectively;
 - (xviii) compliance with heavy vehicle mass, dimension and load restraint requirements; and
 - (xix) all drivers comply with all legal driving requirements and that all driving, loading and unloading times are properly documented and records are kept outlining start times, break times and finish times, in accordance with all Heavy Vehicle Laws. The Service Provider must at all times keep copies of all relevant log books and run sheets and make them available to RMS on request.
- (d) The Service Provider must, within seven days of a written request to do so:
- (i) Provide RMS with a copy of or access to its Safety Management System; and

- (ii) demonstrate compliance with the Safety Management System and all Heavy Vehicle Laws, including providing reasonable evidence of measures taken to achieve such compliance.
- (e) Without limiting RMS' rights to undertake an audit pursuant to clause 20.2, the Service Provider must ensure that the Safety Management System is audited at least once a year by an appropriately qualified third party, to confirm it is being complied with. The Service Provider must immediately provide RMS with a copy of the audit report once available and must implement all recommendations proposed by RMS and the third party auditors as soon as is reasonably possible being not more than 14 days.

13.5 Compliance and termination

- (a) These Terms and Conditions and any communications from RMS with regard to mass and fatigue management or the Heavy Vehicle Laws are intended to assist the Service Provider to provide the Services in accordance with the Heavy Vehicle Laws, but in no way relieve the obligations of the Service Provider to comply with all relevant Heavy Vehicle Laws and these Terms and Conditions.
- (b) If the Service Provider breaches this clause 13 RMS may, without prejudice to any other right it may have, suspend or terminate an Assignment or the agreement between the parties immediately by written notice to the Service Provider.

14. Employment of Service Provider's Representatives

14.1 Service Provider to employ and pay its Representatives

- (a) The Service Provider must at its own expense engage, hire or employ all Representatives required by the Service Provider to perform the Services pursuant to these Terms and Conditions.
- (b) The Service Provider is solely responsible for, and will indemnify RMS against, all salaries, wages, annual leave, long service leave, sick leave, fees, commissions, costs, expenses and liabilities in respect of every such person, including (but not limited to) the payment of all WorkCover and other employee compensation insurance premiums, levies and excesses, the remission of all taxation instalment deductions and superannuation contributions and every other statutory and contractual obligation arising from the employment or engagement of such person.
- (c) All Representatives employed, hired or otherwise engaged by the Service Provider will be the employees or contractors of the Service Provider under and subject to the Service Provider's sole direction and control.
- (d) The Service Provider accepts full responsibility for all the acts and omissions of its Representatives in connection with the performance of these Terms and

Conditions as if the actions and omissions of those persons were the actions of the Service Provider.

- (e) The Service Provider is not authorised to employ or otherwise engage any person on the RMS's behalf.

14.2 Superannuation guarantee charge

- (a) RMS has no obligation to make any superannuation contribution for or in respect to the Service Providers or its Representatives under the Superannuation Guarantee (Administration) Act 1992 (Cth) ('SGA').
- (b) If at any time RMS is given notice in writing by the Australian Taxation Office or is otherwise compelled or required to make superannuation contributions (whether under the SGA or otherwise and whether for any period before, during or after the Term) for or in respect of the Service Providers or its Representatives the Service Provider must reimburse and indemnify RMS the full amount of any contribution, levy, charge or tax (including any penalties and interest) that RMS is required to pay.

15. GST

- (a) Any reference in this clause 15 to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined in the GST Law.
- (b) Unless expressly included, the consideration for any supply made under or in connection with these Terms and Conditions does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause 15.
- (c) Any amount referred to in these Terms and Conditions (other than an amount referred to in paragraph (h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with these Terms and Conditions, the consideration to be provided under these Terms and Conditions for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under paragraph (d) to the Service Provider at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Service Provider must issue to the recipient, before the time of payment of the consideration for the supply, an invoice that constitutes a tax invoice under

the GST Law, that will, where applicable, enable the recipient to claim any tax credits for the GST in respect of supplies to which the invoice relates, or at such other time as the parties agree.

- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with these Terms and Conditions, the Service Provider must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under paragraph (e) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to these Terms and Conditions is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with these Terms and Conditions, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with paragraph (d).

16. Termination

16.1 Termination Events

Without limiting any other rights to terminate contained in these Terms and Conditions, it is a Termination Event if:

- (a) a party gives the other party **5 Business Days** written notice to remedy a breach of these Terms and Conditions, an Assignment or any agreement between the parties and the party in breach fails to remedy the breach within the time allowed; or
- (b) an Insolvency Event occurs in respect of a party.

Either party may terminate an Assignment or any agreement between the parties with immediate effect upon the occurrence of a Termination Event.

16.2 Consequences of termination or expiry

When an Assignment or any agreement between the parties expires, or is terminated:

- (a) each party must return to the other party within 5 Business Days after the date of expiry or termination, the other party's Confidential Information; and
- (b) any accrued rights and obligations of the parties as at the date of termination are unaffected.

17. Indemnity and release

17.1 Indemnity by Service Provider

The Service Provider must indemnify, defend, and hold harmless RMS and RMS's Representatives from and against any Loss arising directly or indirectly from or in connection with:

- (a) a breach of these Terms and Conditions, an Assignment or any other agreement between the parties by the Service Provider;
- (b) the Service Provider or its Representatives' negligence;
- (c) any claim made against RMS by any Representative of the Service Provider in respect of any relevant Law concerning remuneration, income tax, worker's compensation, annual leave, long service leave, leave loading, sick leave, parental leave, personal leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (d) any claim that the Services, the results of the Services, anything the Service Provider, does in providing RMS with the Services, or RMS's use of the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person.
- (e) any claim made against RMS for property damage and/or personal injury by the Service Provider, the Service Provider's Representatives or any third party arising out of or in connection with the Services provided pursuant to these Terms and Conditions.

17.2 Extent to which indemnity will not apply

The indemnity in clause 17.1 will not apply to the extent that any loss, cost, damage, expense, claim, demand or liability is solely and directly caused by the negligence of RMS or its Representatives (other than the Service Provider or the Service Provider's Representatives).

17.3 No incurring of expense necessary

The Service Provider acknowledges that it is not necessary for RMS to incur expense or make payment before enforcing a right of indemnity conferred by these Terms and Conditions or to mitigate its loss.

17.4 Benefit of indemnity

- (a) In clauses 17.1 and 17.6 a reference to RMS includes a reference to RMS's employees, directors, agents and Related Bodies Corporate (each, a **Protected Party**)
- (b) RMS holds the benefit of clauses 17.1 and 17.6 for itself and on trust for each other Protected Party.

17.5 Continuing indemnity

The indemnity in clause clauses 17.1 and any other indemnity in these Terms and Conditions is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of these Terms and Agreements.

17.6 Release by Service Provider

The Service Provider releases and discharges RMS from any claim, liability, loss or damage it may suffer or incur, whether arising from the negligence of RMS or howsoever, which arises directly or indirectly from or in connection with these Terms and Conditions which is not notified in writing to RMS in reasonable detail within three months of termination of an Assignment or any agreement between the parties.

17.7 Maximum Loss

To the extent that RMS is liable to the Service Provider for breach of contract or negligence, the aggregate liability of RMS for any Loss suffered or incurred by the Service Provider in connection with these Terms and Conditions (other than liability for fees due and payable under these Terms and Conditions) is limited to an amount equivalent to the total fees paid or properly invoiced and due to be paid to the Service Provider under these Terms and Conditions by RMS in the 12 months period prior to the Loss occurring.

18. Intellectual Property Rights

18.1 Service Provider Background Intellectual Property Rights

- (a) The Service Provider remains the owner or licensee (as the case may be) of all Service Provider Background Intellectual Property Rights.
- (b) The Service Provider grants or must procure the granting to RMS of a non-exclusive, royalty-free licence to use the Service Provider Background Intellectual Property Rights for the purpose of the Services and enabling RMS to enjoy all benefits of the Services.

18.2 RMS Background Intellectual Property Rights

RMS remains the owner or licensee (as the case may be) of all RMS Background Intellectual Property Rights.

18.3 Agreement specific Intellectual Property Rights

- (a) The Service Provider acknowledges that all Intellectual Property Rights created by the Service Provider in the course of the provision of the Services automatically vests in RMS.
- (b) By agreeing to these Terms and Conditions, the Service Provider:
 - (i) assigns all Intellectual Property Rights made by the Service Provider in the course of providing the Services;

- (ii) undertakes to do all things necessary or desirable to vest in RMS ownership of any Intellectual Property Rights created in the course of the provision of the Services; and
 - (iii) must procure that the Service Providers Representatives comply with the obligations in this paragraph (b).
- (c) The Service Provider must, and must procure that the Service Provider's Representatives, execute all documents (including any further assignments and related documents) which may be reasonably required by RMS to give effect to this clause or to secure ownership, registration or other protection of Intellectual Property Rights for RMS.

19. Insurance

19.1 Insurance policies

The Service Provider must, before the Commencement Date, take out and maintain during the Term the following insurances:

Policy Type	Scope	Coverage
Public and product liability insurance	Covering the Service Provider and its Representatives against any liability to any party, including RMS, arising out of or in connection with the Services.	For an insurance amount of not less than \$20 million per occurrence with regard to Public Liability and in the aggregate with regard to Products Liability.
Pollution/Environmental Liability	Covering the Service Provider and its Representatives against any liability to any party due to an environmental event arising out of or in connection with the Services.	Such amount agreed by the parties
Vehicle Insurance	Fully comprehensive property and third party liability insurance covering all vehicles and their operators used by the Service Provider to perform the Services	For an insurance amount to cover third party liability of not less than \$30 million
Workers compensation insurance	Covering the Service Provider for any claim against it by any person employed by the Service Provider who provides services in relation to this Agreement (and ensure that	For any amount necessary to cover any potential liability under statute or at common law.

	each of its Representatives have similar insurance).	
Any other insurance policies reasonably required by RMS from time to time.		

19.2 Interest of RMS

The Service Provider must ensure that the policies of insurance that it is required to take out note RMS's interest as a principal and note the interest of any other person notified by RMS to the Service Provider.

19.3 Currency certificate

At the request of RMS, the Service Provider must provide to RMS evidence of the currency of the insurance policies it is required to maintain under this clause 19 and a copy of the relevant policies.

19.4 No prejudice

The Service Provider must not do anything which prejudices any policy of insurance and must immediately notify RMS in writing of any event which results in an insurance policy being altered where such alteration materially affects coverage afforded by the relevant policy of insurance.

19.5 Policy claims

If any event occurs which may give rise to a claim involving RMS under any policy of insurance to be taken out by the Service Provider under this clause 19 then the Service Provider must:

- (a) notify RMS within 14 days of that event; and
- (b) ensure that RMS is kept fully informed of any subsequent actions and developments concerning the relevant claim.

19.6 Subcontractors

The Service Provider must ensure that:

- (a) any subcontractor engaged by the Service Provider in relation to the Services under clause 26.2 effects and maintains the insurances, and for the amounts, required by this clause 19; and
- (b) must ensure that its subcontractors comply with all relevant Laws concerning insurance cover for liabilities in relation to employees and subcontractors.

20. Records of Compliance

20.1 Record keeping

- (a) The Service Provider must maintain accurate and complete records of:
 - (i) The performance of each Assignment;
 - (ii) the Services provided to RMS; and
 - (iii) The Service Provider's compliance with clauses 6 (Service Standards) 13 (Heavy Vehicle Laws), 12 (Occupational Health and Safety), 13 (Payment of Service Provider's Representatives) and 19 (Insurance) of these Terms and Conditions.
 - (iv) measures taken to achieve such compliance with these Terms and Conditions reasonably required by RMS from time to time.

20.2 Audit of records

- (a) The Service Provider must permit RMS (or any third party appointed by RMS) to audit the records of the Service Provider and the performance of the Services and provide copies of records and documents to RMS within 7 days of RMS' reasonable request for the same.
- (b) The Service Provider must provide RMS or the third party (as the case may be) with all reasonable assistance, including access to the Service Providers place of business and records and the provision of any information reasonably requested by RMS or the third party (as the case may be) in relation to such an audit.

21. Reporting

The Service Provider must, and must procure that the Service Provider's Representatives comply with any reporting obligations requested by RMS from time to time.

22. Confidentiality

22.1 No disclosure

Other than as permitted under clause 22.2, neither party may disclose to any person the Confidential Information.

22.2 Permitted disclosures

A party (Disclosing Party) may disclose the Confidential Information:

- (a) to its Related Bodies Corporate, its Representative and/or a Representative of its Related Bodies Corporate who needs to know the Confidential Information for the purposes of these Terms and Conditions and subject to the Disclosing Party taking reasonable steps to ensure that any such Related Bodies Corporate and/or Representative (as applicable) 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, provided that the Disclosing Party has:
 - (i) given the other party prior notice where practicable; and
 - (ii) provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
- (c) to professional advisers of a party or to potential buyers of the party or the party's business, provided that the recipients of such Confidential Information are subject to obligations of confidentiality.

22.3 No agency

The Service Provider must not, and must procure that the Service Providers Representatives do not, hold themselves out as an agent of RMS or publicise that it has been engaged by RMS.

22.4 Duration of obligations

The obligations under this clause 22 continue indefinitely.

22.5 Benefit

The Disclosing Party holds the benefit of this clause 22 for itself and for each of its Related Bodies Corporate.

23. Privacy

The Service Provider must comply with the provisions of the *Privacy Act 1988* (Cth) in relation to any Personal Information (as defined in the Privacy Act) provided to the Service Provider by RMS or RMS's Representatives.

24. Notices

24.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under these Terms and Conditions (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) addressed to a party in accordance with its contact details as provided to the other party or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (c) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

24.2 How a Notice must be given

In addition to any other method of serving Notices permitted by statute, a Notice must be given by one of the methods set out in clause 24.3.

24.3 When Notices considered given and received

Subject to clause 24.5, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent by pre-paid post to the address set out in the Notified Contact Details, at 9:00 am on the second Business Day (or the fifth Business Day, if posted to or from a place outside Australia) after the date of posting;
- (c) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

24.4 No electronic communication of Notices

- (a) A Notice must not be given by electronic means of communication other than facsimile and email as permitted under clause 24.3.
- (b) A Notice under 16 (Termination) must be given by email and by registered post.

24.5 Time of delivery and receipt

If pursuant to clause 24.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5:00 pm on a Business Day, then the Notice will be deemed as given and received at 9:00 am on the next Business Day.

24.6 General

A party may change its contact details by giving a Notice to the other party.

25. Dispute resolution

25.1 Compulsory ADR

- (a) The parties must try to resolve any dispute or claim in connection with these Terms and Conditions or their performance of the Services (**'Dispute'**) in accordance with this clause 25. The parties must not commence any Court proceedings (other than an application for urgent interlocutory or declaratory relief) until this process has been completed.
- (b) A party must continue to perform its obligations despite the application of this clause 25.

25.2 Stage 1 - Negotiation

- (a) A party may at any time give the other party a notice of a Dispute (**'Dispute Notice'**). The date upon which the Dispute Notice is delivered is referred to as the Dispute Notice Date.
- (b) The party receiving the Dispute Notice must deliver to other party a written response to the Dispute Notice (**'Answer'**) within 10 business days after the Dispute Notice Date. The Dispute Notice and the Answer must include:
 - (i) a statement of the relevant party's position and a summary of arguments supporting that position; and
 - (ii) what action (if any) that party thinks will resolve the Dispute.
- (c) Representatives of all parties who are authorised to resolve the Dispute must meet within 10 Business Days of the Dispute Notice Date to negotiate in good faith to resolve the Dispute.

25.3 Stage 2 - Mediation

- (a) If the Dispute has not resolved by negotiation within 10 Business Days of the Dispute Notice Date the Parties may agree to refer the Dispute to Mediation in accordance with the Australian Commercial Disputes Centre Guidelines for Commercial Mediation current at the Dispute Notice Date. Those Guidelines are

incorporated into these Terms and Conditions. Where there is any inconsistency between those Guidelines and these Terms and Conditions, these Terms and Conditions prevail.

- (b) If the Parties do not agree to refer the Dispute to Mediation within 20 Business Days of the Dispute Notice Date the dispute resolution process set out in this clause 25 shall be deemed complete and the Parties may commence proceedings in respect of the Dispute in accordance with clause 26.9.

26. General

26.1 Assignment and change in control

- (a) Rights arising out of or under any agreement between the Parties are not assignable by a party without the prior written consent of the other party.
- (b) A breach of paragraph (a) by a party entitles the other party to immediately terminate an Assignment or any agreement between the parties.
- (c) Paragraph (b) does not affect the construction of any other part of these Terms and Conditions.

26.2 Subcontracting

- (a) The Service Provider may not subcontract any of its obligations under these Terms and Conditions without the prior written consent of RMS, which may be withheld by RMS in its absolute discretion.
- (b) Where RMS consents to a subcontracting arrangement, the Service Provider is liable to RMS for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Service Provider.

26.3 Non-solicitation

The Service Provider must not at any time during the Term, and for a period of twelve (12) months after the expiry or termination of an Assignment or any agreement between the parties, whether on the Service Provider's own account or as an agent, officer or employee of any person, canvas or solicit (directly or indirectly) the provision of services the same or similar to the Services provided under an Assignment or any agreement between the parties to any person who is or was a customer of RMS prior to or during the Term.

26.4 Set off

RMS may set off from any amounts it owes to the Service Provider any amounts the Service Provider owes to RMS.

26.5 Variation

A variation of any term of an Assignment or an agreement between the Parties must expressly agreed in writing.

26.6 Further action to be taken at each party's own expense

Each party must, at its own expense:

- (a) do all things and execute all documents necessary to give full effect to an Assignment or other agreement between the parties and the transactions contemplated by it; and
- (b) Maintain all consents, approvals, licences and permissions necessary to perform their obligations under an Assignment or other agreement between the parties.

26.7 Waiver

No party to an Assignment or any agreement between the parties may rely on the words or conduct of any other part as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 26.7 are set out below:

- (a) **Conduct** includes delay in the exercise of a right.
- (b) **Right** means any right arising under or in connection with these Terms and Conditions and includes the right to rely on this clause.
- (c) **Waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

26.8 Invalidity and enforceability

- (a) If any provision of these Terms and Conditions is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Paragraph (a) does not apply where enforcement of the provision of these Terms and Conditions in accordance with paragraph (a) would materially affect the nature or effect of the parties' obligations under these Terms and Conditions.

26.9 Governing law and jurisdiction

- (a) These Terms and Conditions are governed by the law in force in Victoria.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms and

Conditions. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

26.10 **Entire agreement**

These Terms and Conditions and any Assignments or agreements issued by RMS pursuant to these Terms and Conditions states all the express terms of the Assignment or any agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

26.11 **No reliance**

- (a) Neither party has relied on any advice, representation or statement by the other party or person not expressly included in these Terms and Conditions.
- (b) RMS recommends that the Service Provider obtain its own independent legal, business and accounting advice in relation to these Terms and Conditions and the provision of the Services.
- (c) By entering into an Assignment or agreement with RMS, the Service Provider warrants that it has obtained independent legal, accounting and business advice concerning these Terms and Conditions and the provision of the Services.

26.12 **Relationship of parties**

- (a) Nothing in these Terms and Conditions gives a party authority to bind any other party in any way.
- (b) Nothing in these Terms and Conditions imposes any fiduciary duties on a party in relation to any other party.
- (c) Nothing contained in these Terms and Conditions, whether express or implied, will be read or construed so as to operate to place RMS and the Service Provider in a relationship of employment, partnership, agency or joint venture.
- (d) The Service Provider:
 - (i) is an independent contractor carrying on business in its own right;
 - (ii) will, subject to these Terms and Conditions, determine hours of work, routes, methods, guidelines and policies applicable to the performance of the Services; and
 - (iii) is free to provide its services to persons other than RMS.

26.13 **Exercise of rights**

- (a) Unless expressly required by the terms of these Terms and Conditions, a party is required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with these Terms and Conditions.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with these Terms and Conditions. Any conditions must be complied with by the party relying on the consent, approval or waiver.

26.14 **Costs**

Each party shall bear their own costs in relation to the negotiation, preparation and execution of any Assignment or agreement between the parties.

26.15 **Clauses that survive termination**

Clauses 8.2(a), 9, 11.2, 16.2, 17, 18, 19, 20.2, 22, 24 and 25 survive termination of these Terms and Conditions (as well as any other clause which expressly or by implication extends beyond termination).