

FW: Setup contract workspace in Ariba

From: LEE Alex <"o=rta/ou=sydney/cn=recipients/cn=leesk">
To: tss.rmscontracts@transport.nsw.gov.au
Date: Thu, 13 Sep 2018 09:21:41 +1000
Attachments: 01_equip-contract-entry-5336.pdf (237.43 kB); 02_Tender Evaluation Report for Portable Weigh Scales.pdf (2.68 MB); 03_Goods and Services Agreement_PWS_Novation_Executed.pdf (942.96 kB); 04_Letter Of Acceptance - Novation Engineering_RMS2018-001_signed.pdf (298.63 kB)

Hi there

Could you please create the CWS and PO in Ariba for me?

This is a select tender (RMS 2018/001) published via eTenders website on 16Aug2018 and closed on 30Aug2018 5pm.

Awarded Tenderer is Novation Engineering Pty Ltd.

Please see attached supporting documents:

1. Form 5336
2. Approved Tender Evaluation Report
3. Executed contract (Goods and Services Agreement)
4. Letter of Acceptance

Please let me know if I need to provide more information.

Regards

Alex Lee

Project Engineer – Heavy Vehicles Programs
Compliance Monitoring | Compliance Branch | Compliance and Regulatory Services
T 02 8848 8225 F 02 8848 8399 E alex.lee@rms.nsw.gov.au
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services

110 George Street Parramatta NSW 2150

From: CHIU Mark
Sent: Monday, 10 September 2018 2:05 PM
To: LEE Alex
Subject: RE: Setup contract workspace in Ariba

Hi Alex,
As you didn't complete the strategic tender through Ariba, you can get TSS to create the CWS in Ariba for you.

Please fill out the attached form, and send it together with all supporting documents (i.e. the signed tender evaluation report, and signed contract), to:

TSS.RMSContracts@transport.nsw.gov.au

Any questions about the form, let me know.

Regards
Mark

Mark Chiu

RM [REDACTED] nt | Business Services Division
M: [REDACTED] E: mark.chiu@rms.nsw.gov.au
www.rms.nsw.gov.au

Every journey matters
Roads and Maritime Services

From: LEE Alex
Sent: Monday, 10 September 2018 11:27 AM
To: CHIU Mark
Subject: Setup contract workspace in Ariba

Good morning Mark

I had completed the Tender Evaluation Report and waiting for my Executive Director approval. While I am waiting for the approval, could you please help me to setup the Contract Workspace in Ariba?

Regards

Alex Lee
Project Engineer – Heavy Vehicles Programs
Compliance Monitoring | Compliance Branch | Compliance and Regulatory Services
T 02 8848 8225 F 02 8848 8399 E alex.lee@rms.nsw.gov.au
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services
110 George Street Parramatta NSW 2150

Equip Contract Entry Details

Contract details

Supplier:	Novation Engineering Pty Ltd		
Supplier ABN:	50605485409	Supplier No.:	
Contract title (max 40 character limit):	Portable Weigh Scales for Heavy Vehicle Inspections - RMS 2018/001		
Effective date:	12 Sep 2018	Expiration date:	30 Jun 2019
Contract type:	<input checked="" type="checkbox"/> Discrete <input type="checkbox"/> Supply Agreement <input type="checkbox"/> Panel <input type="checkbox"/> Major Capital <input type="checkbox"/> Basic (record purposes only)		
Vendor payment terms:	50% on contract execution, 50% on project completion		
<input type="checkbox"/> Payment claim under <i>Security & Payment Act (15 day payment term)</i>	Category: 44111807		

Financial details

Awarded amount (ex GST):	\$6,755,500.00	Initial contract amount:	\$6,755,500.00
Contract contingency (Discrete contract type):	0	Expenditure type:	Capex
Total contract amount (Awarded amount + contingency):	\$6,755,500.00	Hierarchical type:	Stand-alone
WBS code (Discrete contract type):	P.0033298		
Cost centre (Discrete contract type):	3000302935		
G/L code (Discrete contract type):	513140		
Purchasing organisation:	<input type="checkbox"/> Cluster wide – 9000 <input type="checkbox"/> TfNSW – 1000 <input type="checkbox"/> ST – 4000 <input type="checkbox"/> NSW – 4100 <input checked="" type="checkbox"/> RMS – 3000		
Purchasing group*:	RMS		
Notice period (in days) 30 days by default:			
Requesting officer/Requisitioner*:	Alex Lee (RMS staff ID: 958532)		
Does the Contract require ERS/RCTI? (PO purpose)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Internal stakeholder details

Initiator (Business sponsor)*:	Roger Weeks
Contract manager*:	Alex Lee
Procurement owner*:	Alex Lee
Contract stakeholder visibility (Team tab)*:	

CLID line item details – Min. requirement of 1 line (* Mandatory fields)

Name Line #1 (max 40 character limit)*			
Portable Weigh Scales for Heavy Vehicle Inspections			
Description*:		Portable Weigh Scales for Heavy Vehicle Inspections	
Unit of measure*:	Fixed	Target quantity*:	1
		Price:	\$6,755,500.00
Long text*:		Portable Weigh Scales for Heavy Vehicle Inspections - RMS 2018/001	
Supplier part no.*:		N/A	
		Material Group (UNSPSC product category): 44111807	

Name Line #2 (max 40 character limit)*			
Description*:			
Unit of measure*:		Target quantity*:	
		Price:	
Long text*:			
Supplier part no.*:			
		Material Group (UNSPSC product category):	

Name Line #3 (max 40 character limit)*			
Description*:			
Unit of measure*:		Target quantity*:	
		Price:	
Long text*:			
Supplier part no.*:			
		Material Group (UNSPSC product category):	

Name Line #4 (max 40 character limit)*			
Description*:			
Unit of measure*:		Target quantity*:	
		Price:	
Long text*:			
Supplier part no.*:			
		Material Group (UNSPSC product category):	

Name Line #5 (max 40 character limit)*			
Description*:			
Unit of measure*:		Target quantity*:	
		Price:	
Long text*:			
Supplier part no.*:			
		Material Group (UNSPSC product category):	



Transport Roads & Maritime Services

MEMO

To: Melinda Bailey, Executive Director CaRS Roger Weeks, Director Compliance Arnold Jansen, Senior Manager Compliance Monitoring Samer Soliman, Manager Heavy Vehicle Program	Date: 09/09/2018
From: Alex Lee, Project Engineer, Heavy Vehicle Program	Pages: 2
Subject: Approval for Tender Evaluation Report – Procurement of Portable Weigh Scales (RFT ID: RMS 2018/001)	Reference: A23950195

Issue

The Heavy Vehicle Programs Unit is seeking Financial Delegate (Delegation Level 2) approval for the Tender Evaluation Report – Procurement of Portable Weigh Scales.

Background

Portable Weigh Scales are used by Enforcement Operations Inspectors to weigh heavy vehicles in NSW to meet regulatory and road safety requirements. These portable weigh scales are 25 years old and now require urgent asset replacement to continue mass enforcement in NSW.

In January 2018, the Heavy Vehicle Programs Unit was allocated \$2 million to procure the first portion of 125 portable weigh scales which were delivered ahead of schedule in June 2018. In July 2018, the Heavy Vehicle Programs Unit was allocated \$7 million to procure the second portion of 425 portable weigh scales to complete the fleet replacement.

To procure the second portion of 425 portable weigh scales, a Request for Proposal (RFP) was issued via NSW eTenders website published on 16 August 2018. The procurement approach has been advised and endorsed by RMS Procurement Team. (See attached approved Procurement Strategy)

Comment

Two responses were received which have been evaluated accordingly by the Tender Evaluation Committee (TEC).

The two tenderers were:

- 1. Accucorp Pty Ltd – nominated scale is Intercomp LP788 scales**
- 2. Novation Engineering Pty Ltd – nominated scale is IRD/PAT SAW 10A III scales**

The following tenderer is excluded after the technical assessment:

Tenderer	Reason
Accucorp Pty Ltd	1. The nominated scale within the submission currently does not have OIML R76 Class4 certification which means it is currently unable to be legally for used enforcement. The certification is in progress and is expected in October 2018. However, the outcome of certification is unknown which poses a high risk for RMS to award the contract to this tenderer.

	<p>2. The load cell in the nominated scale made from Aluminium which does not meet the Material Requirement in the RFP. The load cell is required to be made from stainless steel.</p> <p>3. The wheels will be screwed into the edge of the frame which does not meet the Physical Requirement in the RFP the wheels are required to fillet-welded to the frame.</p> <p>4. Operating temperature of the nominated scale is -10°C to +40°C which does not meet the Environmental Operating Requirements as required operating temperature range shall be -20°C to +40°C.</p>
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Following the technical assessment, the submission by **Novation Engineering Pty Ltd for the IRD/PAT SAW 10A III scale** was deemed suitable based on tender evaluation report. The TEC recommends **Novation Engineering Pty Ltd** as the preferred tenderer.

The total cost of the submission by **Novation Engineering Pty Ltd** is **\$6,755,500.00** (excluding GST) including warranty.

As per the financial delegation requirements, the TEC is seeking Executive Directors approval for the Tender Evaluation Report. Once the Tender Evaluation Report has been approved, a purchase order will be raised which will also require Executive Directors approval as per financial delegation workflow.

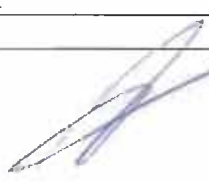

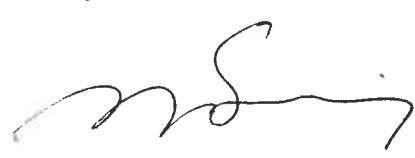
Recommendation

It is recommended that the Executive Director approves the recommendation by the TEC. The Tender Evaluation Report requires Financial Delegate signoff on the last page of the report.

Note: To enable delivery before 30 June 2019, the contract must be executed no later than 30 September 2018.

Attachments

Attachment Description	
Approved Procurement Strategy	
Tender Evaluation Report	

 <p>Arnold Jansen Senior Manager Compliance Monitoring</p>	<p>6-9-18</p> <p>Approved / Not approved</p>
 <p>Roger Weeks Director Compliance</p>	<p>Approved / Not approved</p>
 <p>Melinda Bailey Executive Director, Compliance and Regulatory Services</p>	<p>10/9/18</p> <p>Approved / Not approved</p>

To: Melinda Bailey, Executive Director CaRS
 Roger Weeks, Director Compliance
 Albert Bass, Chief Procurement Officer

CC: Samer Soliman, Manager Heavy Vehicle Programs

From: Alex Lee, Project Engineer **Date:** 07 August 2018
 Heavy Vehicle Programs

Ref: A23496256 **Pages:** 8

Subject: Procurement Strategy for Procurement of Portable Weigh Scales



Transport
 Roads & Maritime
 Services

MEMO

Issue

Approval to approach the market to tender for the supply of portable weigh scales. Compliance and Regulatory Services (CaRS) seeks to approach the market in accordance with the Roads and Maritime Services Procurement Manual to ensure continuity of services and achieve value for money.

Background

There are 550 portable weigh scales used by Enforcement Operations Inspections to weigh heavy vehicles in NSW to meet regulatory and road safety requirement. These portable weigh scales are 25 years old and now require urgent asset replacement to continue mass enforcement in NSW.

In January 2018, the Heavy Vehicle Programs Unit was allocated \$2 million to procure the first portion of 125 portable weigh scales to replace the current fleet of end of life scales. In July 2018, the Heavy Vehicle Programs Unit was allocated \$7 million to procure the second portion of 425 portable weigh scales to complete the fleet replacement.

The Jan 2018 procurement of 125 scales was completed using suppliers in the Heavy Vehicle Programs Maintenance Panel (Contract 17.0000302935.1100). This existing panel was created via an open market tender, and there is a high level of confidence that suppliers in that panel are comprehensive of global suppliers in this niche market.

Attached is the procurement strategy dated 07 August 2018.

Implementation

Select Tender with Request for Proposal (RFP) will be issued for this procurement with endorsement from relevant financial delegates according to RMS Procurement Manual. This select tender approach has been advised and endorsed by RMS Procurement.

Recommendation

It is recommended that you approve this Procurement Strategy to procure 425 portable weigh scales at the estimated total contract value of \$7 million for the provision of heavy vehicle mass enforcement in NSW.

Albert Bass Chief Procurement Officer	<i>Albert Bass</i>	Approved/
Roger Weeks Director, Compliance	<i>Roger Weeks</i>	Approved/ Not Approved/ Approved with changes
Melinda Bailey Executive Director, Compliance and Regulatory Services	<i>Melinda Bailey</i>	Approved/ Not Approved/ Approved with changes 15/8/18

Project: Procurement of Portable Weigh Scales

Author: Alex Lee

Date: 07 August 2018



Transport
Roads & Maritime
Services

COMMERCIAL IN CONFIDENCE

PROCUREMENT STRATEGY

Introduction

This procurement strategy is set out to follow the **procurement lifecycle wheel**, per the diagram below.



PLANNING

1. Procurement objective

The objective of this procurement is to procure 425 portable weigh scales within an approved budget of \$7m.

The portable weigh scales are used by Enforcement Operations Inspectors to weigh heavy vehicles in NSW to meet regulatory and road safety requirements. This procurement will replace the remaining 425 of a fleet of 550 weigh scales which need to be replaced as they have ended their useful life. A previous procurement in January 2018 has already replaced 125 of the 550 portable weigh scales.

The replacement of portable weigh scales to enable enforcement of heavy vehicle inspections in NSW, contributes to the following operational objectives:

- Improving road safety in NSW;
- Assisting in achieving the state plan target to reduce road fatalities on NSW roads;
- Embedding the principle of prevention and early intervention into Government service delivery;
- Reducing avoidable hospital admissions;
- Contributing to monitoring and regulation of heavy vehicle movements throughout NSW;
- Addressing any recent safety concerns;
- Providing road safety enforcement to both rural and urban roads; and,
- Ensuring value for money is achieved for the project as required by the Government's procurement policy.



2. Background

There is a fleet of 550 portable weigh scales used by enforcement operations inspectors in NSW, which are stored in highly customised and hence high cost housings located in each inspectors vehicle. These scales are used to weigh heavy vehicles in NSW to meet regulatory and road safety requirements. These portable weigh scales are 25 years old and now require immediate replacement due continuing failures.

As more weigh scales become inoperable, there is a major risk of serious injury or worse, as the root cause of many heavy vehicle accidents is over-mass vehicles. In 2017, there have been on average 565 notices per month for heavy vehicles being over mass. These vehicles would have otherwise gone undetected and would have remained on the NSW road network resulting in a road safety risk to the public and reputational risk to RMS.

In January 2018, the Heavy Vehicle Programs Unit was allocated \$2 million to procure the first portion of 125 portable weigh scales to replace the current fleet of end of life scales. A Request for Quote (RFQ) was issued to the Heavy Vehicle Programs Maintenance Panel (Contract 17.0000302935.1100) for the procurement of 125 portable weigh scales. The procurement was successfully completed and delivery of the new scales has completed ahead of schedule.

3. Project scope

The heavy vehicle mass management program seeks to purchase 425 portable weigh scales as a replacement for the remaining fleet of weigh scales that have not recently been replaced.

This procurement will be a simple one-off contract for the procurement of 425 portable weigh scales which will not involve any sub-contractors overseen by the principle supplier.

There are no services attached to the supply of the goods. Further, equipment maintenance is out of scope. There is a separate maintenance contract for the maintenance and certification of the portable weigh scales.

The scope of activities includes:

- Confirm Ministerial and CaRS funding for the mass management program;
- Confirm CaRS requirements for provision of portable weigh scales;
- Review and update the contract to reflect CaRS requirements and commercial objectives;
- Going to market to procure 425 weigh scales
- Administration of the procurement process;
- Implementation of contract management; and,
- Communication with internal and external stakeholders.

4. Stakeholders

The stakeholders are set out in the following table:

Name	Role	Position
Roger Weeks	Project Sponsor	Director, Compliance
Alex Lee	Project Manager	Project Engineer, Heavy Vehicle Programs
Albert Bass	Procurement advisor	Chief Procurement Officer
Mark Chiu	Business analyst	Business Change Manager
Donna Willis	Procurement advisor	Senior Procurement Specialist

5. Options and benefits

The remaining fleet of 425 out of 550 portable weigh scales are at the end of their useful life, and there are no other options but to replace these assets. Replacement of these assets will:

- Ensure continuity of the heavy vehicle mass management program and avoid having over mass vehicles on the road network which compromises road safety and RMS reputation.
- Save OPEX costs on re-certification and spare parts required for each minor repair and avoid the current increasing cost of ad-hoc maintenance due to the current fleet requiring service/maintenance at a quickly increasing rate.

The following procurement options have been considered:

Option	Considerations
RFQ	<ul style="list-style-type: none"> • An RFQ to the suppliers in the existing Heavy Vehicle Programs Maintenance Panel (Contract 17.0000302935.1100)
Select Tender	<ul style="list-style-type: none"> • An RFP to the suppliers on the Heavy Vehicle Programs Maintenance Panel (Contract 17.0000302935.1100)
Open Tender	<ul style="list-style-type: none"> • An RFP to the open market
Direct Negotiation	<ul style="list-style-type: none"> • Direct negotiation with the (single) supplier of the earlier procurement of 125 weigh scales.

6. Financial analysis

Budget allocated for FY18/19 is \$7 million:

- Program Name: RMS Capital Maintenance
- Project Name: Compliance and Enforcement Asset Maintenance – Road Safety Facilities
- Prism Sub-Funding Source: Confund Recurrent Appropriation
- Project Code: P.0033298

Forecast estimated value of expenditure (exc GST) on the awarded contracts for provision of portable weigh scales:

Expenditure Milestones	October 2018	December 2018	March 2019	May 2019	Total (ex GST)
Contract Execution	\$3,500,000				\$3,500,000
Scales Delivered		\$3,500,000			\$3,500,000
Total estimated contract expenditure					\$7,000,000

7. Risk assessment

The overall procurement risk is low as it is a purchase of standard goods and a like-for-like replacement of existing equipment. However, the value of spend is very high and the procurement process must ensure RMS is getting value for money.

There are some identified risks in the implementation, as provided in the table below:

Risk	Likelihood	Mitigation Strategy	Risk Owner
The supply of goods are not delivered by 30 June 2019 to meet the business requirement for use of the new portable weigh scales	High	Ensure the Select Tender process finalises by 31 August 2018 and Extensions to the timeframes to be notified to all internal stakeholders as soon as identified	CaRS / Procurement
Changes not clearly communicated to internal and external stakeholders	Low	Communications Plan to clearly outline changes and roles and responsibilities of all internal and external stakeholders including timeframes for all changes	CaRS

8. Recommendation

It is recommended that Roads and Maritime Services issue a Request for Proposal (RFP) via Select Tender to satisfy the requirements set out in this Procurement Strategy for the following reasons:

- Simple procurement of goods (like-for-like replacement)
- Market scan of suppliers already completed via an open tendered panel arrangement
- Time constraints
- Niche supplier market
- A tender process will ensure value for money (and mitigate the risk of a high value spend)

There is a high level of confidence that the tender process for the Heavy Vehicle Programs Maintenance Panel (Contract 17.0000302935.1100) comprehensively scanned the global market for weigh scale suppliers. Five (5) scales suppliers submitted responses and all vendors were placed on the panel. The process further highlighted that the supply of this equipment is a niche market, and all relevant suppliers are on this panel. It was agreed with the RMS procurement team, that, as a tender to the open market for relevant suppliers has already been completed, a "Select Tender" with Request for Proposal (RFP) will be issued for this procurement to all five suppliers.

9. Project Plan

Planned Date Milestone

06/08/2018	Prepare RFP
14/08/2018	Tender live in marketplace
30/08/2018	Tender evaluation
07/09/2018	Approval and Negotiations
02/10/2018	Award contract
08/10/2018	Go live

SOURCING

10. Tender

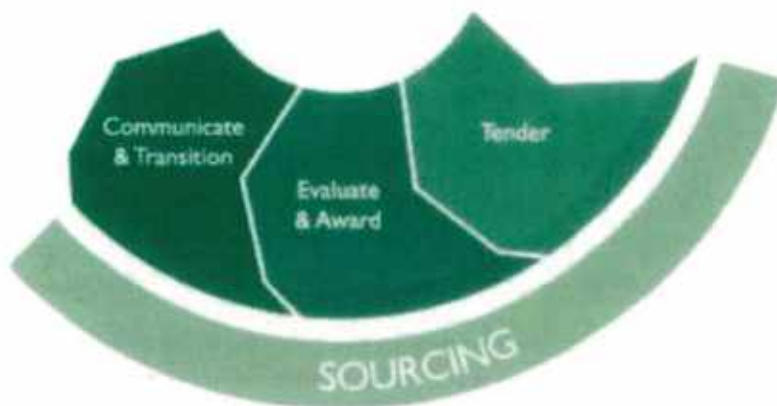
We recommend that Roads and Maritime Services issue Request for Proposal (RFP) by Select Tender for the procurement of portable weigh scales.

11. Evaluation

The value drivers are as detailed in the cost saving summary (per 6. Financial analysis).

The respondents will provide detail of their compliance to the assessment criteria; a quotation of rates and fees; and compliance to the draft contract terms.

The assessment criteria are as follows:



- | |
|---|
| <ul style="list-style-type: none"> • Reliability/Durability - Demonstrated evidence that the nominated scale model or previous models have usable life span of a minimum of 10 years. Evidence could include demonstration that no fewer than ten (10) highways agencies from around the world have used the tendered scales (or equivalent previous models) for 10+ years. |
| <ul style="list-style-type: none"> • Manufacture and delivery program - Demonstrated examples of successful delivery of 100+ scales in the last 24 months. This shows the ability to manufacture and deliver the required amount of scales within the time nominated in RFP. |
| <ul style="list-style-type: none"> • Value for money. |

Weightings will be defined by the assessment panel.

The assessment panel will include Roads and Maritime's Compliance and Regulatory Services Division (CaRS) resources. Financial assurance will be provided by a representative from CaRS Finance branch. A representative of Roads and Maritime Procurement branch will provide procurement oversight. A Probity Officer is not required for this low risk procurement.

12. Communication and transition

A Communication Strategy and transition plan will be provided by Program Management Office (PMO) outlining the tasks, timeframes, roles and responsibilities.

Respondents to the RFP are required to provide delivery plan outlining their timeframes and capability to deliver the portable weigh scales to Australia. It is estimated that the all portable weigh scales shall be delivered to RMS by 30 June 2019.

MANAGING

13. Policies

- RMS Procurement Policy PN195
- RMS Procurement Manual

The NSW Government has committed to improving road safety. NSW Government is a signatory to the National Road Safety Strategy 2011-2020 (National Strategy) which sets out targets to adopt best practice enforcement and reduce the national annual number of deaths and serious injuries by 30 per cent by 2020.

Portable Weigh Scales are used by Enforcement Operations Inspectors to weigh heavy vehicles in NSW to meet regulatory and road safety requirements.

14. Contract management

The proposed contract management strategy framework for a new contract will be led by the Roads and Maritime Procurement Contract Management Team. Roads and Maritime have a dedicated Contracts Manager for operational and tactical contract administration.

The initial role of the Contract Manager is to project manage the implementation process to ensure a seamless asset replacement from existing scales to the brand new scales.

Operational aspects of Contract Management will be managed by the CaRS Compliance Branch Heavy Vehicle Programs Unit who will monitor contract performance through the contract management function in Transport equip Ariba. A portfolio level view of all CaRS contracts will be managed by the Service Relationships branch.

15. Reporting

Providers must complete and supply Roads and Maritime Services with regular reports on their delivery timeframe, in a form approved by Roads and Maritime Services.

16. Compliance management

The provider must supply the following documentation for compliance management:

- Evidence of authorised distributor in NSW for the nominated scale
- OIML certification and IP rating certification for the nominated scale
- ISO 9001 certification from the scale manufacturer

17. Appendices

Nil





Transport
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Tender Evaluation Report

Procurement of Portable Weigh Scales – RMS 2018/001

Date: 06/09/2018
Version: 1.2
Author: Alex Lee
Security Classification: Confidential

1. EXECUTIVE SUMMARY

The purpose of this procurement is to procure portable weigh scales to be used by enforcement operations inspectors to weigh heavy vehicles in NSW to meet regulatory and road safety requirements.

The RFP via NSW eTenders website was issued on: 16/08/2018; and closed on 30/08/2018 at 5PM.

The Tender Box was opened on 04/09/2018 at 1PM.

In this report, a Tenderer means any person or organisation who received the RFx and who submitted a Tender in response. Tenders received in response to the RFx were assessed in accordance with the Evaluation Plan.

The overall objective is to evaluate and identify tenders that are able to meet the requirements in the RFP. The fundamental objective is to ensure that government procurement activities achieve best value for money in supporting the delivery of government services. In order to determine best value for money Tender Evaluation Committee took into account all relevant risks, benefits and costs over the whole of life procurement cycle.

Two submissions were received, with only one tenderer meeting all requirements set in the specification of requirements as detailed in the RFP; the non-compliant submission was excluded due to the deficiencies as detailed at the appropriate stages of this evaluation report.

Based on the evaluation process the submission received from the tenderer listed below is the only proposal that meets the minimum mandatory requirements and cost effective value for money criteria

1. Novation Engineering Pty Ltd

1.1 Recommendation

The Tender Evaluation Committee recommends **Novation Engineering Pty Ltd** as the preferred tenderer based on value for money and meeting the requirements specified in this tender.

ATTACHMENTS
Documents
Request for Proposal (RFP number: RMS 2018/001)
Tenderers Responses



2. THE EVALUATION PROCESS

Stage 1. PRELIMINARY

The following persons with a Declared Evaluation Role for this evaluation provided a Conflict of Interest and Confidentiality Declaration:

Name	Date declaration signed
N/A	N/A

The following conflict of interest issues were raised:

Name	Conflict reported	Resolution
N/A	N/A	N/A

Stage 2. Eligibility Assessment

Tenders were initially assessed for eligibility to identify any non-conformances that were substantial or incapable of rectification and, therefore, justify not considering the tender further (e.g. NSW Code of Practice for Procurement, Legal Entity, Confidentiality, Collusive Arrangement and Improper Assistance).

The mandatory criteria were the minimum standards that suppliers must meet in order to participate in the procurement process. It was deemed by the TEC that these were incapable of rectification and the tenders(s) were not considered further in the evaluation process.

Only one tender was considered eligible at this stage in the evaluation process

Stage 3. Technical Worth

Each remaining tender received a quantitative (score) and qualitative (comment) assessment of the response schedule to the specification was undertaken to determine the degree of effectiveness against the Evaluation Criteria.

Scoring was conducted in accordance with the scoring scales detailed in the Tender Evaluation Plan. The weighting detailed in the Tender Evaluation Plan was used to calculate the effectiveness against the Evaluation Criteria. A total consolidated weighted score was allocated to each of the remaining tenders.



The following summary table is a consolidation of the consolidated score applied to each criterion by tenderer.

Tenderer	Score	Notes
Accucorp Pty Ltd	66	<p>The nominated scale did not meet the majority of the performance requirement except:</p> <ul style="list-style-type: none"> (1) The nominated scale within the submission currently does not have OIML R76 Class4 certification. The certification is in progress and is expected in October 2018. However, the outcome of certification is unknown which poses a high risk for RMS to award the contract to this tenderer. (2) The load cell in the nominated scale is made from Aluminium which does not meet the Material Requirement (4.2.3) as required load cell is required to be made from stainless steel. (3) The wheels will be screwed into the edge of the frame which does not meet the Physical Requirement (4.4.6) as wheels are required to be fillet-welded to the frame for added durability. (4) Operating temperature of the nominated scale is -10°C to +40°C which does not meet the Environmental Operating Requirements (4.5.2) as required operating temperature range shall be -20°C to +40°C. <p>Tenderer supplied evidence of previous models having a usable life span of 10 years and greater. However, all the highways agencies were located in only one country (USA).</p> <p>The tenderer is an authorised distributor in NSW for the nominated scale model.</p> <p>Tenderer confirmed the 425 nominated scales and 70 chargers can be delivered by the required deadline of 30th June 2019.</p>
Novation Engineering Pty Ltd	78	<p>The nominated scale met all the performance requirement.</p> <p>Tenderer supplied evidence of previous models having a usable life span of more than 10 years and has been utilised in 16 countries since 1990 with an average usable life of 20 years.</p> <p>The nominated scale was the same model of scale currently being used by RMS.</p> <p>The tenderer is an authorised distributor in NSW for the nominated scale model.</p> <p>Tenderer confirmed the 425 nominated scales and 70 chargers can be delivered by the required deadline of 30th June 2019.</p>

The assessment also included identification of any perceived or potential risk issues and has been incorporated into Stage 5 Risk Analysis of the evaluation process.

Further clarification was not required from tenderers as requested by the Tender Evaluation Committee.

The Tender Evaluation Committee considered the material effect of the gaps identified; i.e. those which would reduce the likelihood of RMS achieving the outcomes. The following tenderers were put aside and were not considered further in the evaluation process at this time: **Accucorp Pty Ltd**.

Stage 4. Price

The Tender Evaluation Committee considered pricing schedules for the remaining tenders and identified tenders which are cost-effective.

The TEC determined the whole-of-life cost associated with each tender to be:

Tenderer	Whole-of-Life Cost
Novation Engineering Pty Ltd	\$6,755,500.00 (excluding GST)

The following Tenders were considered not cost-effective and were put aside at that time and were not considered further in the evaluation.

None

Stage 5. Risk Analysis

A risk evaluation was conducted on the non-compliant Accucorp tender against risk issues that were identified during the previous stages of the evaluation.

The following risks were identified during the evaluation process.

- (1) RMS might need to terminate the contract if OIML R76 certification is not received in October 2018 as stated in the submission and the procurement activity needs to be started over again, however funding is only available till 30 June 2019.
- (2) Reliability and durability of the nominated scale could be affected by the nominated scale which does not meet the minimum performance requirements as discussed above in Stage 3.

The following tenders demonstrated unacceptable risk, which would reduce the likelihood of achieving the desired outcomes. These tenderers have been put aside and not considered further at that time.

Tenderer	Risk
Accucorp Pty Ltd	<ol style="list-style-type: none"> (1) Intercomp 788 PWS does not currently have OIML R76 certification and proposed October 2018 timeframe for achieving OIML R76 certification is not a certainty. (2) The load cell is made from Aluminium instead of Stainless Steel which will affect the long term durability. (3) The wheels screwed into the frame instead of welded which will affect the long term durability and reliability.

Stage 6. Presentations and Site Visits

The Tender Evaluation Committee did not invite presentations or site visits for this evaluation process.

Stage 7. Interviews

The Tender Evaluation Committee did not interview the remaining tenderers.



Stage 8. Recommendations

The tender that is recommended by the Tender Evaluation Committee to enter into contract negotiations with after giving consideration to the relative ability to satisfy the overall requirement (Technical Worth) at a competitive cost (price) and at an acceptable risk (risk).

The preferred tenderer, on a whole of life value for money basis is **Novation Engineering Pty Ltd.**

This recommendation by the Tender Evaluation Committee is submitted to the financial delegate for approval.

3. AUTHORISATIONS OF THE EVALUATION PROCESS

TENDER EVALUATION COMMITTEE			
The Tender Evaluation Committee has evaluated the tender in accordance with the Tender Evaluation Plan. The recommendation to enter into contract negotiations as stated above.			
Name	Position	Date	Signature
Alex Lee	Convenor	06/09/2018	X
Guido Zatschler	Member	06/09/2018	X
Paul Walker	Member	06/09/2018	X
	Member		X
	Member		X

Authorising Manager – Approval to enter into negotiations

Financial Delegate	Melinda Bailey		
Date		Signature / Initial	X



Transport
Roads & Maritime
Services

Request for Proposal

Supply of portable weigh scales for heavy vehicle enforcement

Details	
RMS:	Roads and Maritime Services (ABN 76 236 371 088) 20 Ennis Rd Milsons Point NSW 2061
Publish Date:	August 16, 2018
RFP Number	RMS 2018/001
RFP Enquiry Cut-off Date	August 23, 2018
Submission Deadline:	August 30, 2018
Lodgement Method:	NSW e-Tendering website
End of Binding Period:	60 days
RFP Manager:	Alex Lee Alex.Lee@rms.nsw.gov.au 02 8848 8225
Probity Adviser:	N/A
External Advisers:	Nathan Chehoud – WSP

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Confidentiality Notice

The information in this document whether in electronic or print format is confidential, is intended for the internal use of Roads and Maritime Services and the use by a Proponent for the purpose of preparing a bona fide Proposal in accordance with clause 8.4. The information must otherwise not be reproduced, distributed or used without first obtaining the written permission of an authorised officer of Roads and Maritime Services.

Part A: Terms of Participation

Introduction

Roads and Maritime Services seeks Proposals for **supply of 425 portable weigh scales and 70 chargers** for heavy vehicle enforcement to Roads and Maritime Services.

Further details are set out in Part B – Scope of Works.

For background information on RMS, see www.rms.nsw.gov.au.

1 Definitions and Interpretation

1.1 Definitions

In this RFP, terms defined on the cover of this RFP have the meaning given there and, except where the context otherwise requires:

Best and Final Offer or BAFO means best and final offer in relation to all or certain aspects of a Proposal.

Conflict of Interest refers to any interest, relationship or other situation which might affect (or be perceived to affect) the impartial assessment of a Proposal by Roads and Maritime Services. This will include (without limitation) any relationships or friendships of the Proponent or its staff with Agency's staff.

Contractor means the Proponent that is selected to supply Goods/Services as a consequence of this RFP.

Deliverables means the Goods or Services described in the Scope of Works.

End of Binding Period refers to the time before which the Proponent cannot amend or withdraw its Proposal and in which the Proposal remains open for acceptance by Roads and Maritime Services (see clause 6.6).

Fees means the charges and rates that are set out in Returnable Schedule 6.

Goods means any goods described in the Scope of Works.

Intellectual Property Rights means any industrial and intellectual property rights throughout the world, including any copyright, invention, patent, design, trade mark, service mark, domain name, trade secret, know-how, confidential information, circuit layouts, database or anything copied or derived from them.

Procurement Policy Framework means the Goods and Services Procurement Policy Framework for NSW Government Agencies issued by the NSW Procurement Board. A copy of the Procurement Policy Framework is available at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-board/nsw-government-procurement-policy-framework>

Proponent means a supplier that submits a Proposal in response to this Request for Proposal

Proposal means a response to this RFP submitted by a Proponent.

Proposed Contract means the proposed contract set out in Part C of this RFP.

Request for Proposal or RFP means this request for proposal.

Returnable Schedule means a returnable schedule set out in Part D of this RFP.

RFP Enquiry Cut-off means the date and time by which any enquiries and clarifications may be made by the Proponent as specified in clause 3.

RMS means Roads and Maritime Services (ABN 76 236 371 088) a NSW Government agency and a corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW) of 20 Ennis Rd Milsons Point NSW 2061.

Scope of Works means the scope of services set out in Part B of this RFP.

Services means any services described in the Scope of Works.

SME means small and medium enterprises as defined in the SME Policy Framework.

SME Participation Plan means a plan demonstrating how a Proponent proposes to support local industry, including jobs, skills and capability development for SME's where the procurement is valued at \$10 million and above. An SME Participation Plan template is available to download at <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/small-and-medium-enterprises-policy-framework>

SME Policy Framework means the NSW Government's Small and Medium Enterprises Policy Framework (see <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/small-and-medium-enterprises-policy-framework>)

Statement of Business Ethics means the RMS statement of business ethics available at <http://home.rta.nsw.gov.au/organisation/divisions-and-branches/corporate-commercial/audit-and-risk/ethics/business-ethics-and-practices/index.html>

Submission Deadline means the date set out in the Details being the time by which Proposals must be lodged.

T&M means time and materials based payment structures.

1.2 Interpretation

Unless the contrary intention appears:

Grammatical forms of defined words: Where a word is defined then other grammatical forms of that word are to be interpreted in the same manner with the necessary grammatical change.

Meaning not limited: The words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

Time & Day Calculations: A reference to time of day is a reference to Sydney time on the date in question. A reference to a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later. A reference to a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day.

2 RFP structure

This RFP comprises four parts:

Part A: Terms of participation	Part A contains the terms of participating in this RFP.
Part B: Scope of Works	Part B sets out the Scope of Works.
Part C: Proposed Contract	Part C contains the agreement under which Roads and Maritime Services wishes to engage the Contractor to provide the Deliverables.
Part D: Returnable Schedules	Part D contains the Returnable Schedules that must be completed by Proponents and returned in their Proposals.

3 RFP timetable

The following timetable below is provided as a guide only. Roads and Maritime Services reserves the right to vary the timetable and the nature and number of activities in its sole discretion without notice to Proponents.

Activity	Date
Evaluation complete	September 6, 2018
Contract executed	October 2, 2018
Proponents notified of outcome of RFP process	October 9, 2018

4 Communications during the RFP process

4.1 Proponent contact person

The Proponent must nominate a contact person who will be the only person authorised to contact (and be contacted by) the RFP Manager. The Proponent must not otherwise initiate contact with Roads and Maritime Services or any of its staff or advisers in relation to the Proposal.

4.2 RFP Manager

All communications relating to this RFP must be in writing and submitted by email to the RFP Manager.

4.3 Requests for clarification or further information

Any questions or requests for further information or clarification of this RFP should be made prior to the RFP Enquiry Cut-off. Roads and Maritime Services reserves the right to not respond to any questions or such requests received after the RFP Enquiry Cut-off.

If a Proponent finds any discrepancy, error or omission in this RFP or other information issued by Roads and Maritime Services in respect of the RFP, the Proponent should notify the RFP Manager immediately.

Roads and Maritime Services is not bound to answer any enquiry. Any answers in response to enquiries will be provided to all Proponents. The identity of the Proponent that initiated the enquiry will not be revealed by Roads and Maritime Services in any such communications.

5 RFP

5.1 No legal relationship

This RFP does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the goods or services the subject of this RFP.

Nothing in this RFP or in the consideration of the Proponent's Proposal obliges Roads and Maritime Services to enter into any agreement with the Proponent, creates a "process contract" or other implied contract, obliges Roads and Maritime Services to consider or accept any Proposal, stops Roads and Maritime Services from considering a non-conforming Proposal, or prevents Roads and Maritime Services from changing the way it manages this RFP or evaluates Proposals.

Without limiting the foregoing, the Statement of Business Ethics and the Procurement Policy Framework are statements of policy only and do not give rise to any legally enforceable obligations on the part of Roads and Maritime Services.

5.2 Costs of participation

Participation in any stage of this RFP process, or in relation to any matter concerning the Proposal, will be at the Proponent's sole risk. All losses, liabilities, damages, costs, charges and expenses incurred by the Proponent (or its employees, agents, contractors or advisors) in any way associated with this RFP will be borne entirely by the Proponent.

5.3 Changes to the RFP process

The processes and procedures set out in this RFP represent the manner in which Roads and Maritime Services currently intends to conduct this RFP. However, Roads and Maritime Services will not be under any legal obligation to conduct this RFP in that manner and Roads and Maritime Services may change the procedures set out in this RFP from time to time in its sole discretion. Roads and Maritime Services will generally try to notify Proponents of any material changes that may affect Proponents but will not necessarily provide reasons.

Without limiting the previous paragraph, Roads and Maritime Services reserves the right, in its absolute discretion, to do all or any of the following at any stage of the RFP process:

- (a) change the format, structure or timing of the RFP process;
- (b) change the scope or requirements of the Deliverables;
- (c) vary, amend, suspend or terminate the RFP process or Proponent participation in it; or
- (d) evaluate any alternative or non-conforming or partially conforming Proposal.

5.4 Alternative Proposals

Roads and Maritime Services may, in its discretion, consider Proposals offering alternative solutions or processes to those requested in this RFP on the condition that the Proponent proposing the alternative solution:

- (a) demonstrates that the alternative solution may be more beneficial to Roads and Maritime Services than the requirements specified in this RFP and will deliver the outcomes sought by Roads and Maritime Services;
- (b) justifies, with supporting data, the proposed alternative solution including the advantages, disadvantages, limitations and capabilities of the alternative solution; and
- (c) also provides a Proposal that conforms to the requirements specified in this RFP.

5.5 Addenda

Roads and Maritime Services reserves the right to vary this RFP (including the variation of any dates or timeframes referred to in this RFP) by issuing an addendum to Proponents. Each addendum will form part of this RFP, and all addenda must be addressed and incorporated into each Proposal. It is the responsibility of Proponents to verify if any addendum has been issued. Where an addendum has been issued after the Proponent has lodged its Proposal, the Proponent should update its Proposal and resubmit the updated Proposal in accordance with Roads and Maritime Services' instructions.

6 Proposals

6.1 Proposal content

Proponents must ensure that:

- (a) their Proposal is presented in the required format as set out in Part D – Proponent's Response; and
- (b) all the information fields in Part D - Proponent's Response are completed and contain the information requested.

Proposals must be in English, be clear, concise and relevant, and be free of irrelevant marketing material or any other superfluous or irrelevant material.

All times must refer to local time Sydney Australia.

Pricing must be in Australian dollars (AUD) excluding GST and pricing terms must comply with Delivered Duty Paid (DDP) (Incoterms 2010), unless otherwise set out in this RFP.

In completing the Proposal, Proponents must not change any pre-existing text in the Returnable Schedules other than to insert the required information.

Proponents should fully inform themselves in relation to all matters arising from this RFP, and must clearly identify and detail all assumptions, qualifications and dependencies upon which their Proposal is based in the relevant section of the Returnable Schedules or where no such section exists, in Returnable Schedule 1. Proponents must also inform Roads and Maritime Services how such assumptions, qualifications and dependencies are proposed to be eliminated. If no assumptions, qualifications and dependencies are identified, the Proposal will be deemed to have none.

6.2 Lodgement

Proposals must be submitted no later than the Submission Deadline.

Proposals must be submitted electronically according to the Lodgement Method noted in the Details

Such Proposals will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Proposals lodged by other means.

Electronically submitted Proposals may be made corrupt or incomplete, for example by computer viruses. Roads and Maritime Services may decline to consider for acceptance a Proposal that cannot be effectively evaluated because it is incomplete or corrupt. Proponents must note that:

- (a) to reduce the likelihood of viruses, Proponents must not include any macros, applets, or executable code or files in a Proposal.
- (b) Proponents should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- (c) Roads and Maritime Services will not be responsible in any way for any loss, damage or corruption of electronically submitted Proposals.

6.3 Labelling

Proponents must label their Proposal with the RFP Number and Proponent's name.

6.4 Late Proposals

Proponents are solely responsible for ensuring that their Proposal is submitted in accordance with this RFP prior to the Submission Deadline. Late Proposals will be rejected except where Roads and Maritime Services determines, in its absolute discretion, that:

- (a) the delay was beyond the reasonable control of the Proponent; and
- (b) the integrity and competitiveness of the RFP process will not be compromised by accepting a late Proposal.

6.5 Extensions

Roads and Maritime Services may extend the Submission Deadline in its sole discretion. Proponents may request an extension in writing to the RFP Manager but Roads and Maritime Services is under no obligation to grant such extension.

6.6 Proposal Terms Valid Until End of Binding Period

A Proposal (including its pricing and other proposed terms) will be deemed to remain valid and open to acceptance at least until the End of Binding Period. Roads and Maritime Services and the Proponent may mutually agree to extend the End of Binding Period.

6.7 Errors in Proposal

If Roads and Maritime Services considers that there are unintentional errors of form in a Proponent's Proposal, Roads and Maritime Services may, but is not required to, request the Proponent to correct or clarify the error but Roads and Maritime Services will not permit any material alteration or addition to the Proposal that would improve it.

If, after a Proponent's Proposal has been lodged, the Proponent becomes aware of an error in the Proposal (excluding clerical errors which would have no bearing on the evaluation of the Proposal) the Proponent must promptly notify Roads and Maritime Services of such error. Roads and Maritime Services may in its absolute discretion allow a Proponent to correct an error where Roads and Maritime Services is satisfied that this does not afford the Proponent any advantage.

7 Evaluation of Proposals

7.1 Evaluation process

Following the Submission Deadline, Roads and Maritime Services intends to evaluate the Proposals received. Roads and Maritime Services may decide, in its absolute discretion, to consider or refuse to consider, any non-conforming Proposal. A non-conforming Proposal includes Proposals that:

- (a) do not comply with the requirements of this RFP;
- (b) are incomplete, ambiguous or illegible, or
- (c) contains insufficient information to enable proper evaluation.

The Details section above states whether or not Roads and Maritime Services intends at this stage to engage an External Adviser to assist (whether or not as a voting member of the evaluation panel) with the evaluation of Proposals. If a Proponent is concerned that the External Adviser has a conflict of interest it must notify Roads and Maritime Services immediately.

7.2 Evaluation criteria

Proposals will be evaluated by determining the best value for money having regard to the price and non-price criteria summarised in the table below. The criteria are not listed in any particular order of importance and are not necessarily of equal weight.

Roads and Maritime Services will not necessarily accept the Proposal offering the lowest price. In evaluating proposals Roads and Maritime Services may have regard to information from any source (including reports on a proponent's performance under other contracts).

As part of the evaluation, Roads and Maritime Services may also at any time undertake a probity and/or risk assessment of Proposals which may include:

- an assessment of the level of conformity of a Proposal with the risk profile of the Proposed Contract;
- a probity assessment of the Proponent and its personnel to ascertain whether there are or have been any unethical, unfair, illegal or corrupt practices or conduct or whether there are any other matters which may adversely reflect on Roads and Maritime Services doing business with the Proponent; and
- an assessment of responses from reference sites and/or referees.

Roads and Maritime Services reserves the right at any time to not proceed further with the consideration of any proposal from a Proponent whose proposal it does not consider to be acceptable having regard to the probity or risk assessment.

The Returnable Schedules provide more detail of the evaluation criteria and information required by Roads and Maritime Services to evaluate Proposals.

Item	Evaluation Criterion	Returnable Schedule
1.	Organisational strategic and financial capability	2
2.	Demonstrated ability to perform the services and compliance with the scope of works	3
3.	Proposed project management methodology and ability to achieve the milestones	4
4.	Price (including where relevant (total cost of ownership, initial price, training, maintenance, disposal etc.)	5

7.3 Clarifications, presentations and interviews

Roads and Maritime Services may request Proponents to submit additional information or clarify Proposals during the RFP process and seek revised offers, in the form of BAFOs or otherwise, from Proponents at any time after the Submission Deadline.

In evaluating Proposals Roads and Maritime Services may, in its sole discretion, take into account information that it obtains in addition to any information contained in a Proposal in relation to a Proponent.

In addition to clarification of Proposals and requesting BAFO or otherwise, Roads and Maritime Services may request some or all Proponents in writing to:

- (a) conduct presentations or briefings; and/or
- (b) make selected human resources nominated by Proponents available for interviews.

7.4 Probity

NOTE: paragraph (a) applies if the Details state (or Roads and Maritime Services later advises) that a Probity Adviser has been appointed, and paragraph (b) applies in all other cases.

- (a) Roads and Maritime Services has appointed a Probity Adviser for this RFP. The Probity Adviser's role in the evaluation process includes:
 - (i) ensuring that the procedures adopted in the receipt and evaluation of a Proposal are fair and equitable and that the probity of the process is independently validated;
 - (ii) monitoring and reporting to Roads and Maritime Services that the evaluation process and procedures in this RFP have been followed and that the outcome is capable of being independently validated;
 - (iii) providing confidence to all Proponents that appropriate processes were fully adhered to and that no Proponent was given an unfair advantage or was unfairly discriminated against;
 - (iv) providing guidance to Roads and Maritime Services as to how unforeseen probity issues could be resolved;
 - (v) attending evaluation committee and Roads and Maritime Services meetings where relevant;
 - (vi) attending any meetings or presentations with Proponents;
 - (vii) monitoring communication during the period between submission of Proposals and final decisions; and
 - (viii) preparing a report outlining the work performed, any issues that arose during the RFP process and confirming that the evaluation process and procedures have been followed.

The Probity Adviser is not a part of the evaluation team but an independent observer of the process and will not be involved in the actual evaluation of any Proposal.

If Proponents have any concerns about the conduct or probity of the evaluation process, the Proponent should promptly bring its concerns to the Probity Adviser's attention. The Probity Adviser will investigate the matter and make an appropriate recommendation to Roads and Maritime Services. Any action taken as a result of such process will be at Roads and Maritime Services's discretion.

- (b) If Proponents have any concerns about the conduct or probity of the evaluation process, the Proponent should promptly advise Audit & Risk Branch by email to **RMS.ethics.hotline@rms.nsw.gov.au** or telephone **1800 043 642** who will investigate the matter

and make an appropriate recommendation to Roads and Maritime Services. Any action taken as a result of such process will be at Roads and Maritime Services's discretion.

7.5 Successful Proposals

Selection of a successful Proponent does not give rise to a contract (express or implied) for the supply of Services. No legal relationship will exist for the supply of Services until such time as a binding contract is executed by them.

The Successful Proponent will be required to enter into a contract with Roads and Maritime Services based on the Proposed Contract.

7.6 Advice to Proponents and Debriefing

Roads and Maritime Services does not intend commenting on or disclosing the progress of the evaluation of Proposals prior to giving formal final notice of the outcome of the RFP.

Unsuccessful Proponents may, within 30 days of the notification of the outcome of the RFP, by email to the RFP Manager, request a debriefing. A debriefing will be provided to the relevant Proponent providing information on why its Proposal was not successful.

Roads and Maritime Services will not provide any information comparing a Proponent's Proposal against the successful Proposal nor will Roads and Maritime Services release the names or scores of other Proponents or any other information about other Proposals other than the name of the successful Proponent(s).

8 General

8.1 Compliance with policy

Compliance with the Procurement Policy Framework and Statement of Business Ethics are essential requirements of this RFP.

A Proponent's failure to comply with this clause 8.1 during the RFP process will be taken into account by Roads and Maritime Services during the Proposal evaluation process and Roads and Maritime Services may pass over the Proponent's Proposal without prejudice to any other rights of action or remedies available to Roads and Maritime Services.

8.2 Intellectual Property Rights in this RFP

All Intellectual Property Rights in this RFP and any documents provided to Proponents as part of the RFP process (**Information Documents**) are owned by and will remain the property of Roads and Maritime Services and Roads and Maritime Services. Proponents obtain no rights in this RFP or the Information Documents. Proponents must not copy, use or otherwise deal with this RFP or the Information Documents, except as reasonably necessary for Proponent to respond to this RFP, unless Roads and Maritime Services gives prior written consent.

8.3 Intellectual Property Rights in Proposal document and licence to use

Upon submission in accordance with the requirements of this RFP, all Proposals (whether in paper or electronic form) will become Roads and Maritime Services property.

Proponents (or their licensors) will retain all Intellectual Property Rights contained in the Proposals. Each Proponent grants to Roads and Maritime Services and Roads and Maritime Services a royalty-free, perpetual and irrevocable licence to use, copy, reproduce, adapt and modify their Proposal for any purpose related to the RFP, including for the purpose of evaluating Proposals and the preparation of associated agreements.

Roads and Maritime Services will retain copies of Proposals, evaluation information and other materials as required by Roads and Maritime Services or NSW Government policies and processes.

8.4 RMS Confidential Information & Public Statements

Confidential information includes all information of Roads and Maritime Services or contained in this RFP or subsequently provided by it on a confidential basis other than information which is or becomes public knowledge (unless through a breach of confidentiality by the Proponent).

Proponents may disclose confidential information to their employees, agents, contractors and advisors ("disclosees") strictly on a need to know basis and solely for the purposes of evaluating the contents of this

RFP, preparing a Proposal and negotiating any resulting contract PROVIDED THAT they first obtain from the disclosees, and provide to Roads and Maritime Services, an executed confidentiality undertaking in favour of Roads and Maritime Services in the following form

- **Attachment 2 – Confidentiality Undertaking** (for use by Proponent's own staff)
- **Attachment 3 – Confidentiality Deed Poll** (for use by anyone other than Proponent's staff)

Proponents are also permitted to disclose confidential information to the extent required by law. However, prior to any such disclosure the Proponent must notify Roads and Maritime Services in writing and allow, to the extent legally possible, a reasonable period for Roads and Maritime Services to consider whether they wish to require the Proponent to challenge the grounds for the disclosure or seek conditions to be placed on the disclosure.

Otherwise, Proponents must not use or disclose Roads and Maritime Services confidential information.

Roads and Maritime Services may require Proponents to return or destroy all copies of this RFP and any other confidential information Roads and Maritime Services has provided to Proponents. Proponents must promptly comply with this request and provide a written certification of destruction (if so directed in writing).

Proponents may not make any announcement or release any information regarding this RFP (including that it has been sent to Proponents) without Roads and Maritime Services's prior written consent. This does not preclude a Proponent which is public listed company from reporting to the ASX provided Roads and Maritime Services has notified it of acceptance of its Proposal by the issue of a formal letter of acceptance. Notification of shortlisting or of being the preferred Proponent is not sufficient.

8.5 Proponent Confidential Information

Proponents should clearly identify any confidential information they have provided as part of their Proposal, including information about the Proponent and its products, services and customers. Such information will not be confidential if Roads and Maritime Services already knows the information, it is public knowledge or Roads and Maritime Services has already obtained the information on a non-confidential basis.

Proponents must not mark the whole or substantially the whole of their Proposal as confidential. Proponents must not claim confidentiality for any part of Proposal which is not genuinely confidential.

Roads and Maritime Services shall in appropriately secure and safeguard all Proponent's provided documentation and shall keep all declared confidential information confidential. Proponents agree that Roads and Maritime Services may disclose any information in their Proposals (including Proponent confidential information) to Roads and Maritime Services' employees, agents, contractors or advisors on a need to know basis and for the purpose of evaluating or clarifying a Proposal or negotiating any resulting contract.

If there is any conflict or inconsistency between Roads and Maritime Services's obligations of confidentiality to the Proponent and Roads and Maritime Services's obligations of disclosure, as referred to in clause 8.6 below, Roads and Maritime Services's obligations of disclosure shall prevail to the extent of the conflict or inconsistency.

8.6 GIPA Act and Contract and Tender Reporting

Notwithstanding any provision of this Part A, Roads and Maritime Services may disclose any information in a Proposal and any resulting contract to the extent that Roads and Maritime Services is required to do so by law, including under the *Government Information (Public Access) Act 2009* (NSW) or by a valid requirement of a government agency. Disclosure obligations may change over time, but Proponents should be aware that the following types of information may be required to be disclosed:

- (a) the name and business address of the Contractor and details of any related bodies corporate that will be involved in carrying out the obligations of the Contractor under any contract resulting from this RFP;
- (b) in relation to this RFP, the method of submitting Proposals and a summary of the criteria against which the various Proposals were assessed;
- (c) details of any resulting contract from the RFP process (including a description of the goods/services to be provided, commencement date of the resulting contract, the term of the resulting contract, and a description of any provisions in the resulting contract which may be subject to variation or renegotiation); and
- (d) the price payable by us under the resulting contract and the basis for future changes in this price.

Detailed information about the disclosure obligations of NSW government agencies is set out in the guidelines published by the Information and Privacy Commission. These guidelines can be accessed at <http://www.ipc.nsw.gov.au/education-and-resources>

Notwithstanding anything else, we may disclose information as required under any NSW Government tender disclosure requirements including those in [Premier's Memorandum 2007-01](#)

8.7 No collusion

In preparing a Proposal, Proponents must not communicate (verbally or otherwise), have any arrangement or arrive at any understanding with any other Proponent concerning the RFP. Proponents must not engage in practices that might be regarded as collusive or anticompetitive.

8.8 Disclaimer

This RFP contains statements based on information or data that Roads and Maritime Services believes to be reliable as at the date of publication. Roads and Maritime Services makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in this RFP. Proponents are responsible for forming their own independent judgements, interpretations, conclusions, and deductions about any information or data in this RFP, and Proponents should examine all information relevant to the risks, contingencies and other circumstances that could affect their Proposal. Roads and Maritime Services will not be liable to Proponents if Proponents rely on any information or data in this RFP.

8.9 Reliance on statements

Roads and Maritime Services may rely on any statements made by Proponents (including their employees, contractors, advisors and agents). The statements Roads and Maritime Services may rely on include those contained in Proposals, those made in any written or verbal communications and in any negotiations with Roads and Maritime Services. If Roads and Maritime Services believes any Proponent has made any false or misleading statements, Roads and Maritime Services may in its absolute discretion exclude the relevant Proposal from the evaluation process at any time.

8.10 Unlawful acts and improper assistance

Proponents (and their employees, contractors, advisers and agents) must not offer any form of inducements to Roads and Maritime Services or exhibit undue pressure (including any duress) on either entity, their employees or advisors in connection with this RFP process. Roads and Maritime Services may exclude a Proposal from consideration where Roads and Maritime Services believes it has been compiled using information improperly or unlawfully obtained from Roads and Maritime Services or with the improper assistance of any person currently or previously associated with .

8.11 Prime contractor, subcontractors and suppliers

Where the involvement of another party or parties will provide a more substantial and complete solution for Roads and Maritime Services, Proponents may involve that other party or parties in proposing that solution. Proponents should disclose the nature of the relationship with the other party or parties to Roads and Maritime Services and the Proposal must include the details specified in **Part D Proponents Response**.

If a Proposal is successful, Roads and Maritime Services will require the Proponent to contract as prime contractor. If there are other parties involved which the Proponent has have disclosed in its Proposal, then the Proponent may be required to subcontract with them and will be responsible to Roads and Maritime Services for the performance of those parties.

8.12 Piggybacking

If a government sector agency or any other statutory body corporate representing the Crown (as defined in the *Government Sector Employment Act 2013*) requests the successful Proponent to provide goods or services to it similar to the goods or services the subject of this RFP then the successful Proponent agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms in its Proposal having regard to any necessary changes (including scope and service levels).

8.13 Limitation of liability

To the extent permitted by law, Roads and Maritime Services is **not** liable for:

- (a) any incorrect or misleading information, or omission to disclose information;
- (b) anything arising out of Roads and Maritime Services's exercise, or failure to exercise, any rights under this RFP;

- (c) any decision by Roads and Maritime Services to discontinue or otherwise vary the RFP documents or process;
- (d) any decision by Roads and Maritime Services to reject any or all Proposals, or to shortlist or negotiate with one or more Proponents (irrespective of whether any other proposal complies with the requirements of this RFP);
- (e) any decision by Roads and Maritime Services to enter into a contract in respect of the subject matter of this RFP with any Proponent (irrespective of whether that Proponent's Proposal complies with the requirements of this RFP or whether any other Proposals comply);
- (f) any costs, losses or expenses incurred by any Proponent in relation to the development, preparation and submission of its Proposal; or
- (g) any misunderstanding arising from the failure by a Proponent to observe the requirements of this RFP.

ATTACHMENT 1

BACKGROUND ON ROADS AND MARITIME SERVICES

Legal Status

Roads and Maritime Services is a NSW government agency incorporated on 1 November 2011 under the Transport Administration Act 1988 (NSW) as the successor of the former Roads and Traffic Authority of New South Wales and NSW Maritime Authority. RMS is a multi-modal transport agency within the broader Transport cluster that has Transport for NSW (TfNSW) at its centre.

Primary Responsibilities

TfNSW has responsibility for transport policy, planning and coordination functions, and the oversight of infrastructure delivery and asset management. In this framework Roads and Maritime's primary responsibilities are to:

- Manage the road network and travel times.
- Provide capacity and maintenance solutions for road and maritime infrastructure.
- Test and licence drivers and vessel operators, and register and inspect vehicles and vessels.
- Improve road and maritime safety.

Core Values

Our core values are:

- Customer focus – We place the customer at the centre of everything we do.
- Collaboration – We value each other and create better outcomes by working together.
- Solutions – We deliver sustainable and innovative solutions to NSW transport needs.
- Integrity – We take responsibility and communicate openly.
- Safety – We promise safety for our people and our customers.

Reporting


Roads and Maritime reports to:

- the Transport Secretary,
- the Minister for Roads, Maritime and Freight and
- the Minister for Transport.

Further Information

Detailed information on RMS is available in our Annual Report which you can download at <http://www.rms.nsw.gov.au/about/corporate-publications/index.html>

ATTACHMENT 2
CONFIDENTIALITY UNDERTAKING BY PROPONENT’S STAFF



Transport
Roads & Maritime
Services

CONFIDENTIALITY UNDERTAKING

PROPONENT (EMPLOYER) NAME

EMPLOYEE NAME

EMPLOYEE ADDRESS

RFP/REOI

Request for Proposal or Request for Expression of Interest issued by Roads and Maritime Services (RMS) for _____

APPROVED PURPOSE

To assist the Proponent with developing a Proposal for the RFP/REOI

BACKGROUND

- RMS has issued the above RFP and made certain confidential information available to the Proponent.
- RMS confidential information is all information about RMS and the RFP which is not in the public domain.
- The Proponent wants to share confidential RMS information with the Employee in order to consider the RFP invitation and to prepare a Proposal to submit to RMS.
- The terms of the RFP require that the Proponent not share RMS confidential information with employees unless the employees sign a Confidentiality Undertaking.

PROMISES BY THE EMPLOYEE

The above named Employee promises as follows for the benefit of RMS:

- 1. to keep the RMS Confidential Information confidential and only use it for the above Approved Purpose;
- 2. unless required by law, not to disclose the RMS Confidential Information to anyone else

NOTE: anyone else requesting access to the Confidential Information must contact the Proponent (Employer) to obtain the Confidential Information.

.....

Signed

.....

Date

Print name

NOTE TO EMPLOYER: only use this form when sharing RMS information with your own staff. If you need to share RMS information with contractors and advisers then you must use Attachment 3 Confidentiality Deed

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Attachment 3 - Confidentiality Deed for Proponent's Contractors (non-employees)



**Transport
Roads & Maritime
Services**

Confidentiality Deed Poll

RMS (Owner of confidential information)	Roads and Maritime Services (ABN 76 236 371 088) ("RMS") 20 Ennis Rd, Milsons Point, NSW 2061, Australia
Recipient of confidential information	Recipient Name: ACN & ABN: Address: Attention:
Approved Purpose (see clause 2.1)	Prepare a Proposal to submit to RMS in connection with the Tender
Tender	[Insert name of RMS Tender invitation]

You (the Recipient) covenant as follows:

1 What is the Confidential Information?

1.1 The Confidential Information governed by this agreement is information which you obtain from us in connection with the Approved Purpose (whether or not recorded in any form). It also includes all information relating to our business policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property. It also includes information directly or indirectly derived from that information.

1.2 It does not include information which:

- (a) is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent);
- (b) was already lawfully known to you on a non-confidential basis;
- (c) is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
- (d) is independently developed by you without access to the Confidential Information.

1.3 The Confidential Information always remains RMS's property. This agreement does not give you any right, title or interest in it.

2 Your use of Confidential Information

- 2.1 You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose, or allow any other person to do so without our written consent.
- 2.2 You must not disclose the Confidential Information to any other person without our prior written consent. If we consent then you must ensure that other person signs a confidentiality agreement on the same terms as this agreement and you remain responsible for their actions.
- 2.3 You may disclose the Confidential Information to your employees and contractors on a strict need-to-know basis for the Approved Purpose provided you expressly inform them that it is RMS Confidential Information and you ensure that they owe you legally enforceable confidentiality obligations in respect of it. At any time we may require that you obtain a confidentiality undertaking from those persons in our favour.
- 2.4 You may disclose the Confidential Information as strictly required by law but you must inform us first

and seek to limit the terms of that disclosure in any manner we reasonably request.

2.5 You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.

2.6 You must inform us as soon as possible if:

- (a) you become aware or suspect that there has been any unauthorised disclosure or use; or
- (b) you are required to disclose the information by law.

2.7 You must return or destroy (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.

3 General

3.1 This agreement contains the entire agreement between both of us in relation to the Confidential Information and supersedes all other discussions, representations and statements about the Confidential Information.

3.2 This agreement may be varied or waived only if we both agree in writing.

- 3.3 You must not assign your rights or obligations under this agreement without our prior written consent.
- 3.4 If we do not exercise a right at any time in connection with a default under this agreement, this does not mean that we have waived the right or cannot exercise it later.

4 Privacy

If you obtain any Personal Information from us or collect it on our behalf then you must comply with any reasonable directions which we give you in connection with our privacy obligations and you agree to comply with the Australian Privacy Principles under the Privacy Act (1988) irrespective of whether or not you are subject to that Act.

5 Governing law

The laws of New South Wales, Australia, govern this agreement and we both submit to the non-exclusive jurisdiction of the courts of that place.

6 Indemnity

You undertake to indemnify us against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by you of this Deed; or
- (b) any act or omission by any of your representatives which, if done or omitted to be done by you, would be a breach of your obligations under this Deed.

7 Injunction

You agree that damages are not a sufficient remedy for RMS for any breach of this agreement and RMS is entitled to specific performance or injunctive relief.

8 End of this agreement

This agreement ends when:

- (a) we notify you in writing it ends; or

- (b) it is replaced by a later agreement which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

9 Definitions

In this agreement, unless the contrary intention appears:

Approved Purpose means the purpose described on the front page of this agreement.

Confidential Information has the meaning as described in clause 1 of this agreement.

Personal Information has the same meaning it has in the Privacy Act (1988).

we and us and our means Roads and Maritime Services.

you means the person named on page 1 as the recipient of Confidential Information.

Signed by the Recipient by its authorised representative in the presence of

Signature of _____

Witness: _____

Name: _____

Signature of Authorised Representative

Name: _____

Title/Position: _____

Date: _____

Part B: Scope of Works

1 Introduction

This RFP relates to the procurement of 425 portable weigh scales for heavy vehicle enforcement.

2 Objectives

Roads and Maritime Services is seeking to replace its fleet of portable weigh scales.

3 Background/context

Portable weigh scales are used to weigh heavy vehicles in NSW to meet regulatory and road safety requirements. These portable weigh scales are end-of-life and now require replacement.

4 Scope

This section describes the performance requirements for Portable Weighing Scales (hereafter referred to as "PWS"). PWS allow Roads and Maritime Services to carry out heavy vehicle enforcement operations. This specification lists two values for certain performance parameters. The threshold [T] is the minimum acceptable level. The objective [O] is the desired level of performance. When only one requirement is stated, it is the threshold requirement.

4.1 Applicable Documents

The PWS must meet both International Specifications and Australian Standards, as per the documents listed in this section below. This section does not include documents cited in other sections of this specification or recommended for additional information or as examples. While every effort has been made to ensure the completeness of this list of documents, users are cautioned that they must meet all specified requirements of the documents cited below, whether or not they are listed.

International Specifications

- OIML R 76 Non-Automatic Weighing Instruments

Australian Standards

- AS 60529 Degrees of protection provided by enclosures (IP Code)

4.2. Material requirements

- 4.2.2 The PWS frame shall be corrosion resistant aluminium or aluminium alloy [T]
- 4.2.3 The PWS load cell shall be stainless steel [T]
- 4.2.4 The PWS display shall be a backlit liquid crystal display (LCD) [O]

4.3. Operating requirements

- 4.3.1 The PWS shall be certified to OIML 76 Class 4 with an accuracy of +/- 35kg (with a 10-tonne load) [T]
- 4.3.2 The PWS shall be battery-operated. The supplied PWS charger shall allow charging of six scales simultaneously. [T]
- 4.3.3 The PWS charging time must be less than 2 hours, from 0% to 100% charge [T]
- 4.3.4 The PWS charger shall not exceed 300 millimetres in height, 300 millimetres in width and 150 millimetres in depth [T]
- 4.3.5 The PWS charging leads shall have a minimum length of 400 millimetres [T]
- 4.3.6 The PWS charger shall enable mounting on and removal from a vehicle frame [T]

4.3.7 The PWS charger and leads must meet relevant Australian Standards [T]

4.3.8 The PWS shall be static weigh scales [T]

4.3.9 The PWS must be configured with a 50kg weight resolution [T]

4.4 Physical Characteristics

4.4.1 The PWS width shall not exceed 810 millimetres, including handles, screen, and any modifications [T]

4.4.2 The PWS length shall not exceed 520 millimetres, including handles, screen, and any modifications [T]

4.4.3 The PWS height shall not exceed 45 millimetres [T]

4.4.4 The PWS total weight shall not exceed 18 kilograms [T]

4.4.5 The PWS shall be fitted with a handle manufactured from the same material as the frame. The handle shall be between 100 millimetres and 140 millimetres from the frame. [T]

4.4.6 The PWS shall be fitted with castor wheels with a stainless steel bracket welded to the scale. The wheels shall be fillet-welded to the PWS frame. [T]

4.5 Environmental Operating Requirements

4.5.1 The PWS shall achieve a minimum degree of protection of IP65 [O]

4.5.2 The PWS operating temperature range shall be -20°C to +40°C [O]

5 Deliverables

425 Portable weigh scales and 70 weigh scale chargers (each charger has 6 charging leads)

The following additional documentation is required as part of the Returnable Schedule 3. Failure to provide the documentation listed below will result in the submission being considered invalid. The additional documentation includes:

- 5.1 Evidence that you are the authorised distributor in NSW for the nominated weigh scale
- 5.2 Dimension drawing(s) of the portable weigh scale
- 5.3 Technical specification sheet of the portable weigh scale.
- 5.4 Warranty terms, confirming a 12-month replacement on faulty scales
- 5.5 OIML certification and IP rating certification
- 5.6 ISO9001 Certification (from scales manufacturer)

6 Milestones

The following are the key milestones that are to be delivered.

Description	Indicative date for delivery
Milestone 1 –Physical delivery and receipt of 425 portable weigh scales and 70 chargers	Before 30 th June 2019

7 Service Levels

Refer to Section 4

8 Other information

- (a) We estimate the quantity to be delivered is 425 portable weigh scales and 70 weigh scale chargers
- (b) We require the goods to be delivered at an address to be provided at contract execution.
- (c) Payment will be on successful delivery of milestones.

- (d) Financial security
- (e) Compliance with codes

9 Other documents

Nil

Part C: Proposed Contract

The Proposed Contract is *Goods and Services Agreement for procurement of portable weigh scales for heavy vehicle enforcement*. The Proposed Contract is attached below.

If a Proponent requires any changes it must mark up the Proposed Contract using track changes to show the precise change. Roads and Maritime Services has a strong preference that no changes be made to the Proposed Contract and may take changes into account in the course of evaluating a Proposal.



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Part D: Proponent’s Response

Proponents must complete the cover page of the Proposal and the Returnable Schedules in this Part D in full and submit it in accordance with Part A – Terms of Participation.

Cover Page for Proposal
Proposal in response to
Request for Proposal for the procurement of
portable weigh scales for heavy vehicle
enforcement

RFP Number: RMS 2018/001

Part D

Returnable Schedules

Section 1 – Proponent's details

Name of Proponent	
--------------------------	--

Section 2 – Proposal details

Name of Proposal	
Date of Proposal	

Section 3 – Required attachments

Proponents to confirm they have completed the following Returnable Schedules:

(Please check)	Document/Returnable Schedule
<input type="checkbox"/>	Cover page for Proposal (this page)
<input type="checkbox"/>	Returnable Schedule 1 – Form of Proposal
<input type="checkbox"/>	Returnable Schedule 2 – Organisational strategic and financial capability
<input type="checkbox"/>	Returnable Schedule 3 – Demonstrated ability to perform the Services and Compliance with the Scope of Works
<input type="checkbox"/>	Returnable Schedule 4 - Proposed project management methodology and ability to achieve the Milestones
<input type="checkbox"/>	Returnable Schedule 5 - Price
<input type="checkbox"/>	Returnable Schedule 6 - Proponent financials
<input type="checkbox"/>	Returnable Schedule 7 - Acceptance of Proposed Contract
<input type="checkbox"/>	Returnable Schedule 8 - Other parties

Returnable Schedule 1

Proponent Particulars & Undertaking

1.1 Introduction

This Returnable Schedule 1 and all of the other Returnable Schedules in this RFP must be completed by the Proponent, and together with any further information provided by the Proponent will constitute its Proposal to this RFP.

1.2 Proponent's details

Please complete the following details in respect of the Proponent.

Response	
Legal Name of Proponent	
Trading Name	
ACN of Proponent	
ABN of Proponent	
Registered office address	
<p>Is the business operated under a Trust ?</p> <p>* Note to Proponents: If the business operates as a Trust then before the Contract is awarded the Proponent will be required to provide (at its cost) a Declaration from the Trustee and a Certification from a lawyer concerning the Trust Deed. Roads and Maritime Services will provide the template Declaration and Certification forms.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Trust Name: _____</p> <p>Trust ABN: _____</p> <p>Note to Proponents: Where your business operates as a trust the Trustee of the Trust should be named as the Proponent. The ACN of the Trustee Proponent will be different from the CAN of the Trust business.</p>
<p>Details of a representative of Proponent who is authorised to represent and legally bind the entity:</p> <ul style="list-style-type: none"> • Name • Title • Current telephone number • Facsimile number • Email address 	
<p>Details of a representative of Proponent who is authorised to act as point of contact in respect of any RFP inquiries generated by Roads and Maritime Services :</p> <ul style="list-style-type: none"> • Name • Title • Current telephone number • Facsimile number • Email address 	

1.3 Disclosure of Conflicts of Interest

(a) Please indicate whether as at the date of submission of this Proposal the Proponent has any actual or potential Conflict of Interest in relation to the Proponent's participation in the RFP process or the supply of the goods or services to Roads and Maritime Services.

Response

- ☐ No – to be selected if no actual or potential Conflict of Interest exists as at the date of submission of this Proposal.
- ☐ Yes – to be selected if an actual or potential Conflict of Interest exists as at the date of submission of this Proposal.

(b) If the response to the question in section 1.3 is “yes”, please provide full details of the Conflict of Interest below.

Response**1.4 Addenda**

Please ensure that the Proponent has checked for any addenda to this RFP prior to submission of its Proposal. Please indicate below the addenda to this RFP (if any) that have been addressed in the Proposal.

Response

- ☐ Yes – the Proponent has received the following Addenda from Roads and Maritime Services amending or supplementing this RFP *[list them]*
- ☐ No – the Proponent has not received any Addenda from Roads and Maritime Services amending or supplementing this RFP

1.5 Compliance with Mandatory Conditions

Please indicate Proponent’s full compliance with all mandatory conditions set out in section.

Response

- ☐ Yes – Proposal complies with all Mandatory Conditions in the Scope of Works.
- ☐ No – Proposal does not comply with the following listed Mandatory Conditions:

1.6 Material qualifications or assumptions not included in any other Returnable Schedule

Please set out any qualifications or assumptions that are material to the Proposal for which no opportunity to respond has been provided elsewhere in the Returnable Schedules. Do not add standard disclaimers or the like.

Response**1.7 Execution of Proposal**

Please complete the following form as a Proponent responding as a single entity, or as the prime contractor if the Proponent is part of a consortium.

UNDERTAKING BY PROPONENT

I, _____ (insert name)

of _____ (insert address) (the **Authorised Representative**) certify as the date of the submission of this Proposal that:

- (a) I hold the position of _____ (insert) and am duly authorised by _____ (insert full name and ABN if applicable) (the **Proponent**) to certify the matters set out herein;
- (b) except as specified in the Proponent's response to Paragraph 1.3(b) of Returnable Schedule 1, no actual or potential Conflict of Interest exists in relation to the Proponent's participation in the RFP Process;
- (c) the Proponent and its related bodies corporate have not and will not engage in conduct which is collusive, anti-competitive, corrupt and/or unethical in connection with the RFP process;
- (d) the Proponent agrees to be bound by the provisions of the RFP; and
- (e) the Proponent represents, warrants and undertakes that:
 - (i) the information in this Proposal is true, accurate and complete and not misleading; and
 - (ii) the Proponent is aware of, and will comply with, the requirements of the Goods and Services Procurement Policy Framework For NSW Government Agencies.

SIGNED for and on behalf of the Proponent by its Authorised Representative, who warrants by his/her execution that he/she has all necessary authority to sign this document for and on behalf of the Proponent, in the presence of:

Signature of Authorised Representative

Signature of Witness

Position

Name of Witness

Date

Returnable Schedule 2

Organisational strategic and financial capability

2.1 Organisational strategic and financial capability	
2.1.1 Information requested	<p>Please provide an overview of your organisation, including:</p> <ol style="list-style-type: none"> 1. Ownership 2. Key staff 3. Governance 4. Management structures and any subsidiaries 5. Paid up capital 6. Total revenue in Australia and globally 7. Number of permanent employees in Australia and globally 8. Number of individual contractors in Australia and globally who are currently performing services on behalf of the Proponent 9. Where your organisation has an ultimate holding company, whether the ultimate holding company will guarantee the performance of your organisation's obligations to Roads and Maritime Services under a contract for the Services. <p>Please also provide the information in points 1-9 above for any subcontracted organisations on which you intend to rely to perform a material part of the Services.</p> <p>Note that Roads and Maritime Services may commission an independent financial assessment of any Proponent and the Proponent must co-operate by providing such information as is reasonably necessary.</p>
2.1.1 Response	
2.1.2 Information requested	<p>Please provide details of any current or historical legal disputes which might impact your ability to perform the Services.</p>
2.1.2 Response	
2.1.3 Information Requested	<p>Please provide audited financial statements for the past three years and <u>complete</u> [Returnable Schedule 8]. Please also provide the same information for any subcontracted organisations on which you intend to rely to perform a material part of the Services.</p>
2.1.3 Response	
2.1.4 Information Requested	<p>Please describe your strategic capability – particularly as it relates to the performance of the Services</p>
2.1.4 Response	

2.2 Material qualifications or assumptions

2.2 Material qualifications or assumptions	
2.2.1 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
2.2.1 Response	

2.3 Insurances

2.3.1 Information requested This table sets out Roads and Maritime Services' insurance requirements and asks for Proponents to specify their current insurance and to confirm that they will increase their insurance to meet Roads and Maritime Services requirements if they are awarded the Contract

2.3.2 Proponent Response	Type of insurance	Roads and Maritime Services Minimum Cover Requirement	Name of Proponent's Current Insurer	Proponent's Current \$ Cover (Specify if it is per claim or in the aggregate).	Proponent will agree to update insurance to meet Roads and Maritime Services requirements
	Product Liability	\$10m for each claim			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Public Liability	\$10m for each claim			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Professional Indemnity	\$1m for each claim			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Workers Compensation				
	Contract Works	[contract value + 15%]			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Service Provider	[\$7M*] for each claim			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Personal Accident and Illness	Minimum 104 weeks if the Proponent is a Sole Trader otherwise not applicable			<input type="checkbox"/> Yes <input type="checkbox"/> No
	[other please insert]				<input type="checkbox"/> Yes <input type="checkbox"/> No

	<p>NOTES:</p> <p>Personal Accident & Illness insurance is required for Sole Traders as Workers Compensation insurance will only cover the employees of a Sole Trader and not the Principal.</p> <p>Only the following insurers are approved by Roads and Maritime Services:</p> <ul style="list-style-type: none">* An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;* Lloyds Underwriters. <p>If the Proponent insures with another insurer then the Proponent should effect a “fronting” policy with one of the above approved insurers</p>
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Returnable Schedule 3

Demonstrated ability to perform the Services and compliance with the Scope of Works

3.1 Demonstrated ability to perform the Services	
3.1.1 Information requested	Please demonstrate your ability to provide goods with a minimum usable life span of 10 years by listing no fewer than ten (10) highways agencies from around the world that have used the tendered scales (or equivalent previous models) for 10+ years..
3.1.1 Response	
3.1.2 Information requested	<p>Please provide details of the two clients that can verify the information you have provided in response to section 3.1.1 of this Returnable Schedule. Details should include, at a minimum: name the clients' organisation, project, position, email, address, phone number.</p> <p>Please note that Roads and Maritime Services may contact referees without further reference to the Proponent.</p>
3.1.2 Response	
3.1.3 Information requested	Please describe how you intend to perform the Services having regard to every numbered section of Part B.
3.1.3 Response	
3.2 Compliance with the Scope of Works	
3.2.1 Information requested	<p>Please indicate the extent to which your Proposal satisfies each numbered section of the Scope of Works using the template table below by entering one of the following options</p> <p>Yes – means your response fully conforms to the requirement.</p> <p>No – means an inability or refusal to meet a requirement on any terms.</p> <p>Partial – means your response partially conforms to the requirement but also imposes different, modified or additional terms with respect to that requirement or involves a different solution or solutions to the requirement.</p> <p>Where you state "<i>Partial</i>" you should provide full details of the extent of the compliance, the additional or different terms imposed and any alternatives offered.</p> <p>In all cases, you should provide information as to how you propose to meet each requirement described in Part B in sufficient detail to enable Roads and Maritime Services to assess your understanding of, and ability to meet its requirements.</p>

	Part B section	Compliance (Yes, No, Partial)	How requirement is satisfied and extent of non-compliance
3.2.2 Response	4.1 Applicable Documents		
	4.2 Material Requirements		
	4.3 Operating Requirements		
	4.4 Physical Requirements		
	4.5 Environmental Operating Requirements		
	5.1 Evidence that you are the authorised distributor in NSW for the nominated weigh scale		
	5.2 Dimension drawing(s) of the portable weigh scale		
	5.3 Technical specification sheet of the portable weigh scale.		
	5.4 Warranty terms, confirming a 12-month replacement on faulty scales		
	5.5 OIML certification and IP rating certification		
	5.6 ISO9001 Certification (from scales manufacturer)		
3.2.3 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule.		
3.2.3 Response			

Returnable Schedule 4

Proposed project management methodology and ability to achieve the milestones

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones	
5.1.1 Information requested	Please describe the project management methodology you propose to use to perform the Services.
5.1.1 Response	
5.1.2 Information requested	Please describe your proposed project delivery team structure including: <ol style="list-style-type: none"> 1. The key resources organised into a delivery hierarchy; 2. The roles and responsibilities of each resource, including the teams they would be expected to manage; and 3. The roles and responsibilities of Roads and Maritime Services.
5.1.2 Response	
5.1.3 Information requested	Please provide examples of successful delivery of 100+ scales in the last 24 months and evidence that you are able to manufacture and deliver the nominated scale within the time nominated in Part B.
5.1.3 Response	
5.1.4. Information requested	Please describe how the Proponent ensures knowledge and experience gained on previous projects is transferred to its employees that will be engaged on subsequent projects, i.e. knowledge management systems.
5.1.4 Response	
5.1.5 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
5.1.6 Response	

Returnable Schedule 5

Price

7.1 Fixed price		
Payment milestone	Deliverables linked to milestone	AUD GST exclusive price
425 portable weighing scales and 70 chargers (including delivery)	Milestone 1	
Total price		

7.4 Discounts and rebates	
5.3.1 Information requested	Please provide details of any discounts or rebates that apply to the Fees and the circumstances under which they apply
5.3.1 Response	
5.3.2 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule
5.3.2 Response	

Returnable Schedule 6

Proponent Financials *

Please provide the Proponent's most recent:

- balance sheet;
- income statement; and
- statement of cash flows.

(or their equivalents) together with a letter from the Proponent's accountant or auditor addressed to Roads and Maritime Services verifying the Proponent's financial position is accurately reflected in the above documents.

Returnable Schedule 7

Response to Proposed Contract

The Proposed Contract is that which is referred to in Part C of the RFP.

Roads and Maritime Services will use information provided in Proposals to populate relevant blanks or variables in the Proposed Contract.

Roads and Maritime Services and Roads and Maritime Services have a strong preference that the terms of the Proposed Contract are not amended and any amendments proposed by the Proponent may be taken into account by Roads and Maritime Services in evaluating the Proposal.

Further, proponents are reminded that where this RFP is issued under a Scheme the Scheme rules may prohibit all or certain amendments to the Proposed Contract.

If the Proponent wishes to amend the Proposed Contract then it must complete the table below in relation to the Proposed Contract (including all Schedules) and return in Microsoft Office format.

9.1 Proposed Changes					
Information Required:		Proponents shall provide details of any proposed changes to the Proposed Contract. Roads and Maritime Services reserves the right to accept, reject or negotiate any such proposed additional clauses in its sole discretion.			
Proponent Response					
No.	Ref	Topic	Proposed Change	Reason	Category ₁
1	{e.g. Cl. 2.3}	{Insert short heading / description of issue}	{Detail the change proposed to the contract, by describing it and proposing specific drafting.}	{Explain the reason for the proposed change to the contract}	{See note below}

¹ Category column - please categorize each requested amendment as follows:

- Category 1 – “Showstoppers” ie the Proponent will not sign the Contract without this amendment;
- Category 2 –Important amendments but not showstoppers

Returnable Schedule 8

Other parties

If the Proponent’s Proposal involves other parties, please provide the following information about the other parties:

Response	
Name of legal entity	
Trading Name	
ACN	
ABN	
Registered office address	
Description of involvement of company in Proposal	
Description of Proponent’s relationship with the company	
Details of the company’s track record in performing the role envisaged in the Proposal	
Details of a representative of Proponent who is authorised to represent and legally bind the entity: <ul style="list-style-type: none">• Name• Title• Current telephone number• Facsimile number• Email address	

If no other parties are involved, please state so.

AccucorpCover Page for Proposal

Proposal in response to
Request for Proposal for the procurement of
portable weigh scales for heavy vehicle
enforcement

RFP Number: RMS 2018/001

Part D

Returnable Schedules

Section 1 – Proponent’s details

Name of Proponent	Accucorp Pty Ltd
--------------------------	------------------

Section 2 – Proposal details

Name of Proposal	Supply of portable weigh scales for heavy vehicle enforcement
Date of Proposal	28/8/18

Section 3 – Required attachments

Proponents to confirm they have completed the following Returnable Schedules:

(Please check)	Document/Returnable Schedule
<input checked="" type="checkbox"/>	Cover page for Proposal (this page)
<input checked="" type="checkbox"/>	Returnable Schedule 1 – Form of Proposal
<input checked="" type="checkbox"/>	Returnable Schedule 2 – Organisational strategic and financial capability
<input checked="" type="checkbox"/>	Returnable Schedule 3 – Demonstrated ability to perform the Services and Compliance with the Scope of Works
<input checked="" type="checkbox"/>	Returnable Schedule 4 - Proposed project management methodology and ability to achieve the Milestones
<input checked="" type="checkbox"/>	Returnable Schedule 5 - Price
<input checked="" type="checkbox"/>	Returnable Schedule 6 - Proponent financials
<input checked="" type="checkbox"/>	Returnable Schedule 7 - Acceptance of Proposed Contract
<input checked="" type="checkbox"/>	Returnable Schedule 8 - Other parties

Returnable Schedule 1

Proponent Particulars & Undertaking

1.1 Introduction

This Returnable Schedule 1 and all of the other Returnable Schedules in this RFP must be completed by the Proponent, and together with any further information provided by the Proponent will constitute its Proposal to this RFP.

1.2 Proponent's details

Please complete the following details in respect of the Proponent.

Response	
Legal Name of Proponent	Accucorp Pty Ltd
Trading Name	Accuweigh
ACN of Proponent	060 173 711
ABN of Proponent	70 060 173 711
Registered office address	12 Kembla Way, Willeton, WA 6155
Is the business operated under a Trust ? <p>* Note to Proponents: If the business operates as a Trust then before the Contract is awarded the Proponent will be required to provide (at its cost) a Declaration from the Trustee and a Certification from a lawyer concerning the Trust Deed. Roads and Maritime Services will provide the template Declaration and Certification forms.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Trust Name: _____ Trust ABN: _____ <p>Note to Proponents: Where your business operates as a trust the Trustee of the Trust should be named as the Proponent. The ACN of the Trustee Proponent will be different from the CAN of the Trust business.</p>
Details of a representative of Proponent who is authorised to represent and legally bind the entity: <ul style="list-style-type: none"> • Name • Title • Current telephone number • Facsimile number • Email address 	Jason Ferguson General Manager 03 9548 5512 03 9548 5513 Jason.f@diverseco.com.au
Details of a representative of Proponent who is authorised to act as point of contact in respect of any RFP inquiries generated by Roads and Maritime Services : <ul style="list-style-type: none"> • Name • Title • Current telephone number • Facsimile number • Email address 	Jason Ferguson General Manager 03 9548 5512 03 9548 5513 Jason.f@diverseco.com.au

1.3 Disclosure of Conflicts of Interest

(a) Please indicate whether as at the date of submission of this Proposal the Proponent has any actual or potential Conflict of Interest in relation to the Proponent's participation in the RFP process or the supply of the goods or services to Roads and Maritime Services.

Response

- ☒ No – to be selected if no actual or potential Conflict of Interest exists as at the date of submission of this Proposal.
- ☐ Yes – to be selected if an actual or potential Conflict of Interest exists as at the date of submission of this Proposal.

(b) If the response to the question in section 1.3 is “yes”, please provide full details of the Conflict of Interest below.

Response**1.4 Addenda**

Please ensure that the Proponent has checked for any addenda to this RFP prior to submission of its Proposal. Please indicate below the addenda to this RFP (if any) that have been addressed in the Proposal.

Response

- ☐ Yes – the Proponent has received the following Addenda from Roads and Maritime Services amending or supplementing this RFP *[list them]*
- ☒ No – the Proponent has not received any Addenda from Roads and Maritime Services amending or supplementing this RFP

1.5 Compliance with Mandatory Conditions

Please indicate Proponent’s full compliance with all mandatory conditions set out in section.

Response

- ☐ Yes – Proposal complies with all Mandatory Conditions in the Scope of Works.
- ☒ No – Proposal does not comply with the following listed Mandatory Conditions:
- Currently the LP788 does not have OIML R76, it has been tested and meets the requirements and is currently at National Measurement and Regulation Office (NMRO) UK for OIML approval. The LP788’s have NTEP approval, class 4 for direct enforcement.
 - Loadcells are constructed of Aluminum
 - Unable to supply a certificate for the IP rating, The LP788 is internally tested to be meet the requirements of IP67
 - Wheels are not welded to the frame, but will be screwed in.
 - Audited Financials have not been supplied at this point, but will be made available upon contract award/negotiations

1.6 Material qualifications or assumptions not included in any other Returnable Schedule

Please set out any qualifications or assumptions that are material to the Proposal for which no opportunity to respond has been provided elsewhere in the Returnable Schedules. Do not add standard disclaimers or the like.

Response

The RFP appears to be based upon a specific PWS, the Intercomp LP788 should be considered for the following reasons:

- The most critical element of any PWS is being low profile. The lower the profile, the less influence of the axle groups not on the PWS's, ie the lower the profile the higher the accuracy. The LP788 has a profile of 21mm.
- The LP788's quoted in this RFP have been designed to specifically meet the RMS size requirements.
- The LP788's received NTEP approval for direct enforcement in April 2018 and they are quickly being adopted by USA highway agencies.
- Intercomp products are known for their accuracy and robustness, which is why their products are used by Defence agencies around the world, and have a NATO number.
- The LP788's come standard with RF connectivity allowing them to be connected to a variety of peripherals for data collection or printing.
- Standard Solar charging, while the LP788 is outside being used the battery is charging.
- The LP788's are supported by Accuweigh, and spares are available locally. The LP788's have less mechanical parts that are prone to wear and failure than competitor models.
- Accuweigh has their own Force test frame, which has been NATA certified. It is based in Seven Hills NSW. The test frame is specifically designed for testing PWS's.
- It is understood that RMS have invested in carrying cases on vehicles that specifically suit their current PWS's. It is believed that the LP788's will fit into this carry case. However Accuweigh are willing to offer their Engineering and Design resources to look at alternatives if required.
- Accuweigh in conjunction are willing to offer a formal free trial of 6 of the LP788's. As part of the trial Accuweigh and Intercomp will supply:-
 - A minimum of 6 units for trial
 - A representative of Intercomp will attend from the USA
 - A local Accuweigh representative as the local technical point of contact.
- As a proof of the confidence in the reliability of the equipment, an extended warranty of 2 years is being included in the offer.
- The LP788's will be supplied certified for enforcement use (tested locally on the test frame at Seven Hills as per the current RMS requirements), we will also include the certifications required to be done 12 months following supply.

1.7 Execution of Proposal

Please complete the following form as a Proponent responding as a single entity, or as the prime contractor if the Proponent is part of a consortium.

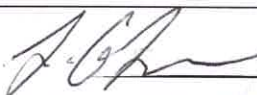
UNDERTAKING BY PROPONENT

I, _____ Jason Ferguson _____ (insert name)

of _____ 20 Yiannis Crt Springvale _____ (insert address) (the **Authorised Representative**) certify as the date of the submission of this Proposal that:

- (a) I hold the position of _____ General Manager _____ (insert) and am duly authorised by _____ Accucorp Pty Ltd_70 060 173 711 _____ (insert full name and ABN if applicable) (the **Proponent**) to certify the matters set out herein;
- (b) except as specified in the Proponent's response to Paragraph 1.3(b) of Returnable Schedule 1, no actual or potential Conflict of Interest exists in relation to the Proponent's participation in the RFP Process;
- (c) the Proponent and its related bodies corporate have not and will not engage in conduct which is collusive, anti-competitive, corrupt and/or unethical in connection with the RFP process;
- (d) the Proponent agrees to be bound by the provisions of the RFP; and
- (e) the Proponent represents, warrants and undertakes that:
 - (i) the information in this Proposal is true, accurate and complete and not misleading; and
 - (ii) the Proponent is aware of, and will comply with, the requirements of the Goods and Services Procurement Policy Framework For NSW Government Agencies.

SIGNED for and on behalf of the Proponent by its Authorised Representative, who warrants by his/her execution that he/she has all necessary authority to sign this document for and on behalf of the Proponent, in the presence of:



Digitally signed by Jason Ferguson
DN: cn=Jason Ferguson, o=Diverseco,
ou=Diverseco, email=jason.f@diverseco, c=AU
Date: 2018.08.30 15:35:30 +10'00'

Signature of Authorised Representative

Signature of Witness

____ Michael van Langenberg _____

Name of Witness

____ General Manager _____

Position

____ 30/08/2018 _____

Date

Returnable Schedule 2

Organisational strategic and financial capability

2.1 Organisational strategic and financial capability															
2.1.1 Information requested	<p>Please provide an overview of your organisation, including:</p> <ol style="list-style-type: none"> 1. Ownership 2. Key staff 3. Governance 4. Management structures and any subsidiaries 5. Paid up capital 6. Total revenue in Australia and globally 7. Number of permanent employees in Australia and globally 8. Number of individual contractors in Australia and globally who are currently performing services on behalf of the Proponent 9. Where your organisation has an ultimate holding company, whether the ultimate holding company will guarantee the performance of your organisation's obligations to Roads and Maritime Services under a contract for the Services. <p>Please also provide the information in points 1-9 above for any subcontracted organisations on which you intend to rely to perform a material part of the Services. Note that Roads and Maritime Services may commission an independent financial assessment of any Proponent and the Proponent must co-operate by providing such information as is reasonably necessary.</p>														
2.1.1 Response	<p><i>Accucorp Pty Ltd is part of the Diverseco group of companies, Diverseco Pty Ltd (ABN 75 082 334 156) is the holding company of Accucorp and would guarantee the performance of the organisation's obligations to Roads and Maritime Services for the Services.</i></p> <p><i>The key staff of the company would be the members of the Executive committee, who are also responsible for the governance of Diverseco</i></p> <table border="0"> <tr> <td><i>CEO</i></td> <td><i>Brenton Cunningham</i></td> </tr> <tr> <td><i>CFO</i></td> <td><i>Stephen Burns</i></td> </tr> <tr> <td><i>Director People & Legal</i></td> <td><i>Elizabeth Panayi</i></td> </tr> <tr> <td><i>Director Innovations & Change</i></td> <td><i>Dan Valmadre</i></td> </tr> <tr> <td><i>Executive GM</i></td> <td><i>Jason Ferguson</i></td> </tr> <tr> <td><i>Executive GM</i></td> <td><i>Tm Francis</i></td> </tr> <tr> <td><i>Executive GM</i></td> <td><i>Kevin Aburn</i></td> </tr> </table> <p><i>See attached Diverseco Structure.pdf</i></p> <p><i>Total Diverseco Revenue for Calendar year 2017 \$42.4M</i></p> <p><i>Diverseco Capital \$4.2M</i></p> <p><i>Current Staff count is 162.</i></p> <p><i>The group uses a number of sub-contractors, to perform service such as freight, transport of weights, and approx. 5 companies to perform services in remote country areas.</i></p>	<i>CEO</i>	<i>Brenton Cunningham</i>	<i>CFO</i>	<i>Stephen Burns</i>	<i>Director People & Legal</i>	<i>Elizabeth Panayi</i>	<i>Director Innovations & Change</i>	<i>Dan Valmadre</i>	<i>Executive GM</i>	<i>Jason Ferguson</i>	<i>Executive GM</i>	<i>Tm Francis</i>	<i>Executive GM</i>	<i>Kevin Aburn</i>
<i>CEO</i>	<i>Brenton Cunningham</i>														
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<i>Executive GM</i>	<i>Jason Ferguson</i>														
<i>Executive GM</i>	<i>Tm Francis</i>														
<i>Executive GM</i>	<i>Kevin Aburn</i>														
2.1.2 Information requested	<p>Please provide details of any current or historical legal disputes which might impact your ability to perform the Services.</p>														

2.1 Organisational strategic and financial capability														
2.1.2 Response	N/A													
2.1.3 Information Requested	Please provide audited financial statements for the past three years and <u>complete</u> [Returnable Schedule 8]. Please also provide the same information for any subcontracted organisations on which you intend to rely to perform a material part of the Services.													
2.1.3 Response	<table border="1"> <thead> <tr> <th></th> <th>CY16</th> <th>CY17</th> </tr> </thead> <tbody> <tr> <td>Turnover</td> <td>\$35.4m</td> <td>\$40.4m</td> </tr> <tr> <td>Profit</td> <td>\$1.8m</td> <td>\$2.1m</td> </tr> <tr> <td>Cashflow</td> <td>Rolling \$1-1.2m</td> <td>Rolling \$1.2-1.6m</td> </tr> </tbody> </table> <p><i>Summary of financials for Diverseco Pty Ltd,</i></p>			CY16	CY17	Turnover	\$35.4m	\$40.4m	Profit	\$1.8m	\$2.1m	Cashflow	Rolling \$1-1.2m	Rolling \$1.2-1.6m
	CY16	CY17												
Turnover	\$35.4m	\$40.4m												
Profit	\$1.8m	\$2.1m												
Cashflow	Rolling \$1-1.2m	Rolling \$1.2-1.6m												
2.1.4 Information Requested	Please describe your strategic capability – particularly as it relates to the performance of the Services													
2.1.4 Response	<p><i>Originally evolving from the industrial weighing sector, DiverseCo has built on its capabilities to become one of Australia's leading integrated measurement, packaging and robot automation solutions provider to a broad range of industries. Since establishment in 1992, our company has grown through mergers and acquisitions to become the international company it is today, with brands and offices operations in every Australian mainland state and internationally in New Zealand and Singapore</i></p> <p><i>The DiverseCo group of companies include AccuOnboard, AccuPak, AccuWeigh, Public Weighbridges Australia, Robot Technologies-Systems Australia, SCACO and Ultrahawke.</i></p> <p><i>The group's complementary capabilities and core competencies are both broad and deep. They span all services and products involved in the design, development, implementation and ongoing support of weighing and dimensional measurement systems, end-of-line packaging, materials handling and product inspection systems, and robotics automation systems.</i></p> <p><i>PWS are a core part of our business, and with our resources across Australia we have the service and support capability to back up the supply. The national coverage assists with area focussed projects such as this (ie NSW supply only), because we are able to use interstate resources help wherever required.</i></p> <p><i>Another key factor is the strategic alliance Diverseco has with Intercomp, the two companies have worked together for over 17 years. Intercomp has been serving the weighing and measurement industry for over 35 years. The combined experience ensures that a quality product is supplied and professionally supported.</i></p>													

2.2 Material qualifications or assumptions	
2.2.1 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
2.2.1 Response	

2.3 Insurances

2.3.1 Information requested This table sets out Roads and Maritime Services' insurance requirements and asks for Proponents to specify their current insurance and to confirm that they will increase their insurance to meet Roads and Maritime Services requirements if they are awarded the Contract

	Type of insurance	Roads and Maritime Services Minimum Cover Requirement	Name of Proponent's Current Insurer	Proponent's Current \$ Cover (Specify if it is per claim or in the aggregate).	Proponent will agree to update insurance to meet Roads and Maritime Services requirements
2.3.2 Proponent Response	Product Liability	\$10m for each claim	Chubb Insurance Australia Ltd	\$20M aggregate	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Public Liability	\$10m for each claim	Chubb Insurance Australia Ltd	\$20M each occurrence	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Professional Indemnity	\$1m for each claim	Chubb Insurance Australia Ltd	\$5M each occurrence	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Workers Compensation		Icare (NSW)		
	Contract Works	[contract value + 15%]		Can be arranged upon request	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Service Provider	[\$7M*] for each claim	Chubb Insurance Australia Ltd	Stock/Customers Goods Value Aus Wide \$2,420,000 Theft limit \$75,000 Care Custody Control Limit \$250,000 Marine Transit Limit \$300,000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Personal Accident and Illness	Minimum 104 weeks if the Proponent is a Sole Trader otherwise not applicable		N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
	[other please insert]				<input type="checkbox"/> Yes <input type="checkbox"/> No
	NOTES: Personal Accident & Illness insurance is required for Sole Traders as Workers Compensation insurance will only cover the employees of a Sole Trader and not the Principal. Only the following insurers are approved by Roads and Maritime Services: * An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; * Lloyds Underwriters. If the Proponent insures with another insurer then the Proponent should effect a "fronting" policy with one of the above approved insurers				

Returnable Schedule 3

Demonstrated ability to perform the Services and compliance with the Scope of Works

3.1 Demonstrated ability to perform the Services	
3.1.1 Information requested	Please demonstrate your ability to provide goods with a minimum usable life span of 10 years by listing no fewer than ten (10) highways agencies from around the world that have used the tendered scales (or equivalent previous models) for 10+ years..
3.1.1 Response	<p> Arizona Department of Public Safety Colorado State Patrol Kentucky State Police Massachusetts State Police Mississippi Department of Public Safety North Dakota Highway Patrol Oregon Department of Transportation Tennessee Highway Patrol Texas Department of Public Safety Vermont Motor Vehicle Department New Mexico Department of Public Safety </p> <p>The above highway agencies have been using Intercomp wheel pad weighers.</p>
3.1.2 Information requested	<p>Please provide details of the two clients that can verify the information you have provided in response to section 3.1.1 of this Returnable Schedule. Details should include, at a minimum: name the clients' organisation, project, position, email, address, phone number.</p> <p>Please note that Roads and Maritime Services may contact referees without further reference to the Proponent.</p>
3.1.2 Response	<p> Robert Eshom <i>Deputy Chief</i> New Mexico Department of Public Safety Commercial Vehicle Enforcement Bureau 4491 Cerrillos Rd Santa Fe, NM 87507-9721 </p> <p> Phone: (505) 827-9231 robert.eshom@state.nm.us </p> <p> Capt. Scott Carnegie <i>Motor Carrier Unit Chief Inspector</i> Mississippi Department of Public Safety Motor Carrier Unit 1900 East Woodrow Wilson P.O. Box 958 </p>

	<p>Jackson, MS 39205</p> <p>Phone: (601) 987-1212</p> <p>Fax: (601) 987-1215</p> <p>scarnegie@dps.ms.gov</p>
3.1.3 Information requested	Please describe how you intend to perform the Services having regard to every numbered section of Part B.
3.1.3 Response	<p><u><i>Accuweigh and Intercomp.</i></u></p> <p><i>Accuweigh has been distributing the Intercomp range of products for over 17 years. Intercomp has been serving and the weighing and measurement industry for over 35 years.</i></p> <p><i>Intercomp are an ISO accredited manufacturing facility and are the largest manufacturer of portable weighing and measurement products.</i></p> <p><i>The portable weighing products are recognised as being durable and accurate and are used in aerospace, defence, enforcement, transport and numerous other industries.</i></p> <p><i>As an indication of their reliability and accuracy, the scales are used in the aeronautical industry. As well as having NATO numbers for use in the USA Defence Forces.</i></p> <p><i>In 2017 Accuweigh sold over 130 units of Intercomp Wheel Pads to Australian Department of Defence. We are currently in progress of supplying 100 units of the Intercomp LS630 to an Australian Government department.</i></p> <p><i>Accuweigh carries stock, accessories and spares for the intercom range.</i></p> <p><i>Letters stating Accuweigh's right to distribute and equipment lifespan are attached.</i></p> <p><i>Accuweigh proposes to supply 425 x LP788's with 70 power chargers. The LP788 is manufactured by Intercomp, and where it meets the scope is listed below.</i></p> <p><i>Accuweigh has recently purchased a force testing machine specifically designed for the testing of wheel pads. The force testing frame has been installed at our Seven Hills facility. The wheel pads will be landed in Sydney, freighted from Intercomp's facilities in Minnesota in batches of 100. When they arrive in Seven Hills, they will be tested and certified for use. Then distributed to the relevant RMS offices as directed. The purchasing, liaising with Intercomp and freighting with Intercomp will be managed by our Purchasing department and Product Manager, the calibration and distribution process will be managed by our RMS service coordinator. (The RMS service coordinator currently arranges the calibration of the RMS PWS's.</i></p> <p><i>Intercomp and Accuweigh are able to supply the 425 PWS's and chargers by the required deadline of 30th June 2019, for an order placed by October 9th 2018. It is expected the require time to supply would be 7 months subject to confirmation on placement of order.</i></p>

	LP788
Overall Dimension (L x W x H)	808 x 432 x 45mm
Includes handle and wheels	
Platform Area (L x W)	450 x 394 mm
Platform Height	21 mm
Weight	16kg
Construction	Aerospace grade Aluminium
Wheels (App A)	Fitted
Power	Solar/Rechargeable battery
Capacity	10t
Division	20kg
Accuracy	Meets OIML R76 Class4
OIML Approval	Pending (Expected Oct 2018)
NTEP Approval	Passed
IP Rating	IP 67
Wireless communication	Yes
6 Scale Charger	Included
NATA Certification	Included
Delivered to Parramatta, NSW	Included
Warranty	24 months
Authorised Distributor	Letter Attached

3.2 Compliance with the Scope of Works

3.2.1 Information requested	<p>Please indicate the extent to which your Proposal satisfies each numbered section of the Scope of Works using the template table below by entering one of the following options</p> <p>Yes – means your response fully conforms to the requirement.</p> <p>No – means an inability or refusal to meet a requirement on any terms.</p> <p>Partial – means your response partially conforms to the requirement but also imposes different, modified or additional terms with respect to that requirement or involves a different solution or solutions to the requirement.</p> <p>Where you state “<i>Partial</i>” you should provide full details of the extent of the compliance, the additional or different terms imposed and any alternatives offered.</p> <p>In all cases, you should provide information as to how you propose to meet each requirement described in Part B in sufficient detail to enable Roads and Maritime Services to assess your understanding of, and ability to meet its requirements.</p>		
3.2.2 Response	Part B section	Compliance (Yes, No, Partial)	How requirement is satisfied and extent of non-compliance
	4.1 Applicable Documents	No	- Currently the LP788's do not have OIML R 76, they are currently being tested at National Measurement and Regulation Office in the UK. They have NTEP accreditation, see attached “LP788 Scale

			NTEP certification". - The LP788's are internally tested at Intercomp to meet IP67
4.2 Material Requirements	4.2.2 Yes 4.2.3 No 4.2.4 Yes		4.2.1. High Strength Aluminium Alloy 4.2.3 Aluminium 2024 loadcells (6) 4.2.4 Auto back lit LCD.
4.3 Operating Requirements	4.3.1 Partial 4.3.2 Yes 4.3.3 Yes 4.3.4 Yes 4.3.5 Yes 4.3.6 Yes 4.3.7 Yes 4.3.8 Yes 4.3.8 Yes		4.3.1 The LP788 meets the accuracy of OIML R76 Class 4, however actual certification is in progress and is expected in October. It currently holds NTEP. See attached "LP788 Specifications for RMS.pdf" for all specs
4.4 Physical Requirements	4.4.1 Yes 4.4.2 Yes 4.4.3 Yes 4.4.4 Yes 4.4.5 Yes 4.4.6 No		4.4.1 The overall width excluding the handle is 808mm, without wheels 4.4.4 Weight is 16kg 4.4.6 The wheels will be screwed into the edge of the frame.
4.5 Environmental Operating Requirements	4.5.1 Yes 4.5.2 No		4.5.1 Achieves IP67 4.5.2 Operating temp -10 to 40 deg C
5.1 Evidence that you are the authorised distributor in NSW for the nominated weigh scale	5.1 Yes		Attached, see "Accuweigh Representation for Wheel Load Scales.pdf"
5.2 Dimension drawing(s) of the portable weigh scale	5.2 Yes		Attached, see "LP788 SCALE.pdf"
5.3 Technical specification sheet of the portable weigh scale.	5.3 Yes		Attached, see "LP788 Specifications for RMS.pdf"
5.4 Warranty terms, confirming a 12-month replacement on faulty scales	5.4 Yes		Manufacturer's warranty https://www.intercompcompany.com/terms-and-conditions An extended warranty of 2 years is being offered
5.5 OIML certification and IP rating certification	5.5 No		As per above
5.6 ISO9001 Certification (from scales manufacturer)	5.6 Yes		Attached, see "Intercomp ISO.pdf"

3.2.3 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule.		
3.2.3 Response			

Returnable Schedule 4

Proposed project management methodology and ability to achieve the milestones

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones	
5.1.1 Information requested	Please describe the project management methodology you propose to use to perform the Services.
5.1.1 Response	<i>The requirements of the Supply are clear, and the process and milestones are clear. Therefore, the project management methodology will be based on the Waterfall methodology. Upon receipt of order a detailed plan would be put in place detailing timelines and key responsibilities. The project can be broken down into Order, Manufacture, Import, Certify and Deliver</i>
5.1.2 Information requested	Please describe your proposed project delivery team structure including: <ol style="list-style-type: none"> 1. The key resources organised into a delivery hierarchy; 2. The roles and responsibilities of each resource, including the teams they would be expected to manage; and 3. The roles and responsibilities of Roads and Maritime Services.
5.1.2 Response	<p><i>Project Manager: Brenton Hampson – NSW Sales/Branch manager</i> <i>Order & Import: Ian Cunningham – National Info Manager</i> <i>Manufacture: Eric Peterson – Intercomp Vice President</i> <i>Certify: Ashley Frost – Service Coordination</i> <i>Errol Nigli – Senior Technician (technical lead for certification)</i> <i>Iain Hall – Senior Technician (certification)</i> <i>Chris Schiller – Technician (certification)</i> <i>Deliver: Terry Trenberth – Warehouse Supervisor</i> <i>Leo Hector – Technician</i></p> <p><i>Corporate support (if required) Listed because of their experience with PWS, Intercomp and RMS.</i> <i>Jason Ferguson – Executive General Manager</i> <i>Dan Valmadre – Director Innovation and Change</i></p> <p><i>RMS Responsibilities: The main requirement from RMS is to nominate the points of delivery, number of units and site contacts.</i></p>
	Please provide examples of successful delivery of 100+ scales in the last 24 months and evidence that you are able to manufacture and deliver the nominated scale within the time nominated in Part B.
5.1.3 Response	<i>Intercomp manufacturer 3,000-4,000 portable wheel load scales each year and a +\$20M in annual revenue. 100's have been sold in single lots to US Military, but no single contract for 100+ scales to a government enforcement agency in past 24 months. Inside of the last 12 months Accuweigh and Intercomp supplied 99 PWS's to Australian Department of Defence, and currently in progress of supplying a further 96 units for a new order.</i>
5.1.4. Information requested	Please describe how the Proponent ensures knowledge and experience gained on previous projects is transferred to its employees that will be engaged on subsequent projects, i.e. knowledge management systems.

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones

5.1.4 Response	<i>Communication is a key component of success; regular meetings are held covering all elements of the business. Work Instructions are used for projects, review meetings are conducted, and work instructions are updated accordingly.</i>
5.1.5 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
5.1.6 Response	

Returnable Schedule 5

Price

7.1 Fixed price		
Payment milestone	Deliverables linked to milestone	AUD GST exclusive price
425 portable weighing scales and 70 chargers (including delivery)	Milestone 1	\$3,986,480
Total price		

7.4 Discounts and rebates	
5.3.1 Information requested	Please provide details of any discounts or rebates that apply to the Fees and the circumstances under which they apply
5.3.1 Response	<p><i>The price in 7.1 is already a discounted price, and includes the following benefits:</i></p> <ul style="list-style-type: none"> - 2-year warranty, - <i>The PWS's will be supplied certified in accordance with the current RMS requirements, plus 12 months after supply we will supply a second certification in accordance with the current RMS requirements.</i>
5.3.2 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule
5.3.2 Response	

Returnable Schedule 6

Proponent Financials *

Please provide the Proponent's most recent:

- balance sheet;
- income statement; and
- statement of cash flows.

(or their equivalents) together with a letter from the Proponent's accountant or auditor addressed to Roads and Maritime Services verifying the Proponent's financial position is accurately reflected in the above documents.

	CY16	CY17
Turnover	\$35.4m	\$40.4m
Profit	\$1.8m	\$2.1m
Cashflow	Rolling \$1-1.2m	Rolling \$1.2-1.6m

We will not be providing full financials at this stage. We are happy to provide more details upon contract award/final negotiations.

Returnable Schedule 7

Response to Proposed Contract

The Proposed Contract is that which is referred to in Part C of the RFP.

Roads and Maritime Services will use information provided in Proposals to populate relevant blanks or variables in the Proposed Contract.

Roads and Maritime Services and Roads and Maritime Services have a strong preference that the terms of the Proposed Contract are not amended and any amendments proposed by the Proponent may be taken into account by Roads and Maritime Services in evaluating the Proposal.

Further, proponents are reminded that where this RFP is issued under a Scheme the Scheme rules may prohibit all or certain amendments to the Proposed Contract.

If the Proponent wishes to amend the Proposed Contract then it must complete the table below in relation to the Proposed Contract (including all Schedules) and return in Microsoft Office format.

9.1 Proposed Changes					
Information Required:		Proponents shall provide details of any proposed changes to the Proposed Contract. Roads and Maritime Services reserves the right to accept, reject or negotiate any such proposed additional clauses in its sole discretion.			
Proponent Response					
No.	Ref	Topic	Proposed Change	Reason	Category ¹
1	{e.g. Cl. 2.3}	{Insert short heading / description of issue}	{Detail the change proposed to the contract, by describing it and proposing specific drafting.}	{Explain the reason for the proposed change to the contract}	{See note below}

¹ Category column - please categorize each requested amendment as follows:

- Category 1 – “Showstoppers” ie the Proponent will not sign the Contract without this amendment;
- Category 2 – Important amendments but not showstoppers

Returnable Schedule 8

Other parties

If the Proponent's Proposal involves other parties, please provide the following information about the other parties:

Response	
Name of legal entity	
Trading Name	
ACN	
ABN	
Registered office address	
Description of involvement of company in Proposal	
Description of Proponent's relationship with the company	
Details of the company's track record in performing the role envisaged in the Proposal	
Details of a representative of Proponent who is authorised to represent and legally bind the entity: <ul style="list-style-type: none"> • Name • Title • Current telephone number • Facsimile number • Email address 	

If no other parties are involved, please state so.



Transport
Roads & Maritime
Services

Request for Proposal

Supply of portable weigh scales for heavy vehicle enforcement

Details	
RMS:	Roads and Maritime Services (ABN 76 236 371 088) 20 Ennis Rd Milsons Point NSW 2061
Publish Date:	August 16, 2018
RFP Number	RMS 2018/001
RFP Enquiry Cut-off Date	August 23, 2018
Submission Deadline:	August 30, 2018
Lodgement Method:	NSW e-Tendering website
End of Binding Period:	60 days
RFP Manager:	Alex Lee Alex.Lee@rms.nsw.gov.au 02 8848 8225
Probity Adviser:	N/A
External Advisers:	Nathan Chehoud – WSP

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Part A: Terms of Participation

Introduction

Roads and Maritime Services seeks Proposals for **supply of 425 portable weigh scales and 70 chargers** for heavy vehicle enforcement to Roads and Maritime Services.

Further details are set out in Part B – Scope of Works.

For background information on RMS, see www.rms.nsw.gov.au.

1 Definitions and Interpretation

1.1 Definitions

In this RFP, terms defined on the cover of this RFP have the meaning given there and, except where the context otherwise requires:

Best and Final Offer or BAFO means best and final offer in relation to all or certain aspects of a Proposal.

Conflict of Interest refers to any interest, relationship or other situation which might affect (or be perceived to affect) the impartial assessment of a Proposal by Roads and Maritime Services. This will include (without limitation) any relationships or friendships of the Proponent or its staff with Agency's staff.

Contractor means the Proponent that is selected to supply Goods/Services as a consequence of this RFP.

Deliverables means the Goods or Services described in the Scope of Works.

End of Binding Period refers to the time before which the Proponent cannot amend or withdraw its Proposal and in which the Proposal remains open for acceptance by Roads and Maritime Services (see clause 6.6).

Fees means the charges and rates that are set out in Returnable Schedule 6.

Goods means any goods described in the Scope of Works.

Intellectual Property Rights means any industrial and intellectual property rights throughout the world, including any copyright, invention, patent, design, trade mark, service mark, domain name, trade secret, know-how, confidential information, circuit layouts, database or anything copied or derived from them.

Procurement Policy Framework means the Goods and Services Procurement Policy Framework for NSW Government Agencies issued by the NSW Procurement Board. A copy of the Procurement Policy Framework is available at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-board/nsw-government-procurement-policy-framework>

Proponent means a supplier that submits a Proposal in response to this Request for Proposal

Proposal means a response to this RFP submitted by a Proponent.

Proposed Contract means the proposed contract set out in Part C of this RFP.

Request for Proposal or RFP means this request for proposal.

Returnable Schedule means a returnable schedule set out in Part D of this RFP.

RFP Enquiry Cut-off means the date and time by which any enquiries and clarifications may be made by the Proponent as specified in clause 3.

RMS means Roads and Maritime Services (ABN 76 236 371 088) a NSW Government agency and a corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW) of 20 Ennis Rd Milsons Point NSW 2061.

Scope of Works means the scope of services set out in Part B of this RFP.

Services means any services described in the Scope of Works.

SME means small and medium enterprises as defined in the SME Policy Framework.

SME Participation Plan means a plan demonstrating how a Proponent proposes to support local industry, including jobs, skills and capability development for SME's where the procurement is valued at \$10 million and above. An SME Participation Plan template is available to download at <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/small-and-medium-enterprises-policy-framework>

SME Policy Framework means the NSW Government's Small and Medium Enterprises Policy Framework (see <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/small-and-medium-enterprises-policy-framework>)

Statement of Business Ethics means the RMS statement of business ethics available at <http://home.rta.nsw.gov.au/organisation/divisions-and-branches/corporate-commercial/audit-and-risk/ethics/business-ethics-and-practices/index.html>

Submission Deadline means the date set out in the Details being the time by which Proposals must be lodged.

T&M means time and materials based payment structures.

1.2 Interpretation

Unless the contrary intention appears:

Grammatical forms of defined words: Where a word is defined then other grammatical forms of that word are to be interpreted in the same manner with the necessary grammatical change.

Meaning not limited: The words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

Time & Day Calculations: A reference to time of day is a reference to Sydney time on the date in question. A reference to a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later. A reference to a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day.

2 RFP structure

This RFP comprises four parts:

Part A: Terms of participation	Part A contains the terms of participating in this RFP.
Part B: Scope of Works	Part B sets out the Scope of Works.
Part C: Proposed Contract	Part C contains the agreement under which Roads and Maritime Services wishes to engage the Contractor to provide the Deliverables.
Part D: Returnable Schedules	Part D contains the Returnable Schedules that must be completed by Proponents and returned in their Proposals.

3 RFP timetable

The following timetable below is provided as a guide only. Roads and Maritime Services reserves the right to vary the timetable and the nature and number of activities in its sole discretion without notice to Proponents.

Activity	Date
Evaluation complete	September 6, 2018
Contract executed	October 2, 2018
Proponents notified of outcome of RFP process	October 9, 2018

4 Communications during the RFP process

4.1 Proponent contact person

The Proponent must nominate a contact person who will be the only person authorised to contact (and be contacted by) the RFP Manager. The Proponent must not otherwise initiate contact with Roads and Maritime Services or any of its staff or advisers in relation to the Proposal.

4.2 RFP Manager

All communications relating to this RFP must be in writing and submitted by email to the RFP Manager.

4.3 Requests for clarification or further information

Any questions or requests for further information or clarification of this RFP should be made prior to the RFP Enquiry Cut-off. Roads and Maritime Services reserves the right to not respond to any questions or such requests received after the RFP Enquiry Cut-off.

If a Proponent finds any discrepancy, error or omission in this RFP or other information issued by Roads and Maritime Services in respect of the RFP, the Proponent should notify the RFP Manager immediately.

Roads and Maritime Services is not bound to answer any enquiry. Any answers in response to enquiries will be provided to all Proponents. The identity of the Proponent that initiated the enquiry will not be revealed by Roads and Maritime Services in any such communications.

5 RFP

5.1 No legal relationship

This RFP does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the goods or services the subject of this RFP.

Nothing in this RFP or in the consideration of the Proponent's Proposal obliges Roads and Maritime Services to enter into any agreement with the Proponent, creates a "process contract" or other implied contract, obliges Roads and Maritime Services to consider or accept any Proposal, stops Roads and Maritime Services from considering a non-conforming Proposal, or prevents Roads and Maritime Services from changing the way it manages this RFP or evaluates Proposals.

Without limiting the foregoing, the Statement of Business Ethics and the Procurement Policy Framework are statements of policy only and do not give rise to any legally enforceable obligations on the part of Roads and Maritime Services.

5.2 Costs of participation

Participation in any stage of this RFP process, or in relation to any matter concerning the Proposal, will be at the Proponent's sole risk. All losses, liabilities, damages, costs, charges and expenses incurred by the Proponent (or its employees, agents, contractors or advisors) in any way associated with this RFP will be borne entirely by the Proponent.

5.3 Changes to the RFP process

The processes and procedures set out in this RFP represent the manner in which Roads and Maritime Services currently intends to conduct this RFP. However, Roads and Maritime Services will not be under any legal obligation to conduct this RFP in that manner and Roads and Maritime Services may change the procedures set out in this RFP from time to time in its sole discretion. Roads and Maritime Services will generally try to notify Proponents of any material changes that may affect Proponents but will not necessarily provide reasons.

Without limiting the previous paragraph, Roads and Maritime Services reserves the right, in its absolute discretion, to do all or any of the following at any stage of the RFP process:

- (a) change the format, structure or timing of the RFP process;
- (b) change the scope or requirements of the Deliverables;
- (c) vary, amend, suspend or terminate the RFP process or Proponent participation in it; or
- (d) evaluate any alternative or non-conforming or partially conforming Proposal.

5.4 Alternative Proposals

Roads and Maritime Services may, in its discretion, consider Proposals offering alternative solutions or processes to those requested in this RFP on the condition that the Proponent proposing the alternative solution:

- (a) demonstrates that the alternative solution may be more beneficial to Roads and Maritime Services than the requirements specified in this RFP and will deliver the outcomes sought by Roads and Maritime Services;
- (b) justifies, with supporting data, the proposed alternative solution including the advantages, disadvantages, limitations and capabilities of the alternative solution; and
- (c) also provides a Proposal that conforms to the requirements specified in this RFP.

5.5 Addenda

Roads and Maritime Services reserves the right to vary this RFP (including the variation of any dates or timeframes referred to in this RFP) by issuing an addendum to Proponents. Each addendum will form part of this RFP, and all addenda must be addressed and incorporated into each Proposal. It is the responsibility of Proponents to verify if any addendum has been issued. Where an addendum has been issued after the Proponent has lodged its Proposal, the Proponent should update its Proposal and resubmit the updated Proposal in accordance with Roads and Maritime Services' instructions.

6 Proposals

6.1 Proposal content

Proponents must ensure that:

- (a) their Proposal is presented in the required format as set out in Part D – Proponent's Response; and
- (b) all the information fields in Part D - Proponent's Response are completed and contain the information requested.

Proposals must be in English, be clear, concise and relevant, and be free of irrelevant marketing material or any other superfluous or irrelevant material.

All times must refer to local time Sydney Australia.

Pricing must be in Australian dollars (AUD) excluding GST and pricing terms must comply with Delivered Duty Paid (DDP) (Incoterms 2010), unless otherwise set out in this RFP.

In completing the Proposal, Proponents must not change any pre-existing text in the Returnable Schedules other than to insert the required information.

Proponents should fully inform themselves in relation to all matters arising from this RFP, and must clearly identify and detail all assumptions, qualifications and dependencies upon which their Proposal is based in the relevant section of the Returnable Schedules or where no such section exists, in Returnable Schedule 1. Proponents must also inform Roads and Maritime Services how such assumptions, qualifications and dependencies are proposed to be eliminated. If no assumptions, qualifications and dependencies are identified, the Proposal will be deemed to have none.

6.2 Lodgement

Proposals must be submitted no later than the Submission Deadline.

Proposals must be submitted electronically according to the Lodgement Method noted in the Details

Such Proposals will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Proposals lodged by other means.

Electronically submitted Proposals may be made corrupt or incomplete, for example by computer viruses. Roads and Maritime Services may decline to consider for acceptance a Proposal that cannot be effectively evaluated because it is incomplete or corrupt. Proponents must note that:

- (a) to reduce the likelihood of viruses, Proponents must not include any macros, applets, or executable code or files in a Proposal.
- (b) Proponents should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- (c) Roads and Maritime Services will not be responsible in any way for any loss, damage or corruption of electronically submitted Proposals.

6.3 Labelling

Proponents must label their Proposal with the RFP Number and Proponent's name.

6.4 Late Proposals

Proponents are solely responsible for ensuring that their Proposal is submitted in accordance with this RFP prior to the Submission Deadline. Late Proposals will be rejected except where Roads and Maritime Services determines, in its absolute discretion, that:

- (a) the delay was beyond the reasonable control of the Proponent; and
- (b) the integrity and competitiveness of the RFP process will not be compromised by accepting a late Proposal.

6.5 Extensions

Roads and Maritime Services may extend the Submission Deadline in its sole discretion. Proponents may request an extension in writing to the RFP Manager but Roads and Maritime Services is under no obligation to grant such extension.

6.6 Proposal Terms Valid Until End of Binding Period

A Proposal (including its pricing and other proposed terms) will be deemed to remain valid and open to acceptance at least until the End of Binding Period. Roads and Maritime Services and the Proponent may mutually agree to extend the End of Binding Period.

6.7 Errors in Proposal

If Roads and Maritime Services considers that there are unintentional errors of form in a Proponent's Proposal, Roads and Maritime Services may, but is not required to, request the Proponent to correct or clarify the error but Roads and Maritime Services will not permit any material alteration or addition to the Proposal that would improve it.

If, after a Proponent's Proposal has been lodged, the Proponent becomes aware of an error in the Proposal (excluding clerical errors which would have no bearing on the evaluation of the Proposal) the Proponent must promptly notify Roads and Maritime Services of such error. Roads and Maritime Services may in its absolute discretion allow a Proponent to correct an error where Roads and Maritime Services is satisfied that this does not afford the Proponent any advantage.

7 Evaluation of Proposals

7.1 Evaluation process

Following the Submission Deadline, Roads and Maritime Services intends to evaluate the Proposals received. Roads and Maritime Services may decide, in its absolute discretion, to consider or refuse to consider, any non-conforming Proposal. A non-conforming Proposal includes Proposals that:

- (a) do not comply with the requirements of this RFP;
- (b) are incomplete, ambiguous or illegible, or
- (c) contains insufficient information to enable proper evaluation.

The Details section above states whether or not Roads and Maritime Services intends at this stage to engage an External Adviser to assist (whether or not as a voting member of the evaluation panel) with the evaluation of Proposals. If a Proponent is concerned that the External Adviser has a conflict of interest it must notify Roads and Maritime Services immediately.

7.2 Evaluation criteria

Proposals will be evaluated by determining the best value for money having regard to the price and non-price criteria summarised in the table below. The criteria are not listed in any particular order of importance and are not necessarily of equal weight.

Roads and Maritime Services will not necessarily accept the Proposal offering the lowest price. In evaluating proposals Roads and Maritime Services may have regard to information from any source (including reports on a proponent's performance under other contracts).

As part of the evaluation, Roads and Maritime Services may also at any time undertake a probity and/or risk assessment of Proposals which may include:

- an assessment of the level of conformity of a Proposal with the risk profile of the Proposed Contract;
- a probity assessment of the Proponent and its personnel to ascertain whether there are or have been any unethical, unfair, illegal or corrupt practices or conduct or whether there are any other matters which may adversely reflect on Roads and Maritime Services doing business with the Proponent; and
- an assessment of responses from reference sites and/or referees.

Roads and Maritime Services reserves the right at any time to not proceed further with the consideration of any proposal from a Proponent whose proposal it does not consider to be acceptable having regard to the probity or risk assessment.

The Returnable Schedules provide more detail of the evaluation criteria and information required by Roads and Maritime Services to evaluate Proposals.

Item	Evaluation Criterion	Returnable Schedule
1.	Organisational strategic and financial capability	2
2.	Demonstrated ability to perform the services and compliance with the scope of works	3
3.	Proposed project management methodology and ability to achieve the milestones	4
4.	Price (including where relevant (total cost of ownership, initial price, training, maintenance, disposal etc.))	5

7.3 Clarifications, presentations and interviews

Roads and Maritime Services may request Proponents to submit additional information or clarify Proposals during the RFP process and seek revised offers, in the form of BAFOs or otherwise, from Proponents at any time after the Submission Deadline.

In evaluating Proposals Roads and Maritime Services may, in its sole discretion, take into account information that it obtains in addition to any information contained in a Proposal in relation to a Proponent.

In addition to clarification of Proposals and requesting BAFO or otherwise, Roads and Maritime Services may request some or all Proponents in writing to:

- (a) conduct presentations or briefings; and/or
- (b) make selected human resources nominated by Proponents available for interviews.

7.4 Probity

NOTE: paragraph (a) applies if the Details state (or Roads and Maritime Services later advises) that a Probity Adviser has been appointed, and paragraph (b) applies in all other cases.

- (a) Roads and Maritime Services has appointed a Probity Adviser for this RFP. The Probity Adviser's role in the evaluation process includes:
 - (i) ensuring that the procedures adopted in the receipt and evaluation of a Proposal are fair and equitable and that the probity of the process is independently validated;
 - (ii) monitoring and reporting to Roads and Maritime Services that the evaluation process and procedures in this RFP have been followed and that the outcome is capable of being independently validated;
 - (iii) providing confidence to all Proponents that appropriate processes were fully adhered to and that no Proponent was given an unfair advantage or was unfairly discriminated against;
 - (iv) providing guidance to Roads and Maritime Services as to how unforeseen probity issues could be resolved;
 - (v) attending evaluation committee and Roads and Maritime Services meetings where relevant;
 - (vi) attending any meetings or presentations with Proponents;
 - (vii) monitoring communication during the period between submission of Proposals and final decisions; and
 - (viii) preparing a report outlining the work performed, any issues that arose during the RFP process and confirming that the evaluation process and procedures have been followed.

The Probity Adviser is not a part of the evaluation team but an independent observer of the process and will not be involved in the actual evaluation of any Proposal.

If Proponents have any concerns about the conduct or probity of the evaluation process, the Proponent should promptly bring its concerns to the Probity Adviser's attention. The Probity Adviser will investigate the matter and make an appropriate recommendation to Roads and Maritime Services. Any action taken as a result of such process will be at Roads and Maritime Services's discretion.

- (b) If Proponents have any concerns about the conduct or probity of the evaluation process, the Proponent should promptly advise Audit & Risk Branch by email to **RMS.ethics.hotline@rms.nsw.gov.au** or telephone **1800 043 642** who will investigate the matter and make an appropriate recommendation to Roads and Maritime Services. Any action taken as a result of such process will be at Roads and Maritime Services's discretion.

7.5 Successful Proposals

Selection of a successful Proponent does not give rise to a contract (express or implied) for the supply of Services. No legal relationship will exist for the supply of Services until such time as a binding contract is executed by them.

The Successful Proponent will be required to enter into a contract with Roads and Maritime Services based on the Proposed Contract.

7.6 Advice to Proponents and Debriefing

Roads and Maritime Services does not intend commenting on or disclosing the progress of the evaluation of Proposals prior to giving formal final notice of the outcome of the RFP.

Unsuccessful Proponents may, within 30 days of the notification of the outcome of the RFP, by email to the RFP Manager, request a debriefing. A debriefing will be provided to the relevant Proponent providing information on why its Proposal was not successful.

Roads and Maritime Services will not provide any information comparing a Proponent's Proposal against the successful Proposal nor will Roads and Maritime Services release the names or scores of other Proponents or any other information about other Proposals other than the name of the successful Proponent(s).

8 General

8.1 Compliance with policy

Compliance with the Procurement Policy Framework and Statement of Business Ethics are essential requirements of this RFP.

A Proponent's failure to comply with this clause 8.1 during the RFP process will be taken into account by Roads and Maritime Services during the Proposal evaluation process and Roads and Maritime Services may pass over the Proponent's Proposal without prejudice to any other rights of action or remedies available to Roads and Maritime Services.

8.2 Intellectual Property Rights in this RFP

All Intellectual Property Rights in this RFP and any documents provided to Proponents as part of the RFP process (**Information Documents**) are owned by and will remain the property of Roads and Maritime Services and Roads and Maritime Services. Proponents obtain no rights in this RFP or the Information Documents. Proponents must not copy, use or otherwise deal with this RFP or the Information Documents, except as reasonably necessary for Proponent to respond to this RFP, unless Roads and Maritime Services gives prior written consent.

8.3 Intellectual Property Rights in Proposal document and licence to use

Upon submission in accordance with the requirements of this RFP, all Proposals (whether in paper or electronic form) will become Roads and Maritime Services property.

Proponents (or their licensors) will retain all Intellectual Property Rights contained in the Proposals. Each Proponent grants to Roads and Maritime Services and Roads and Maritime Services a royalty-free, perpetual and irrevocable licence to use, copy, reproduce, adapt and modify their Proposal for any purpose related to the RFP, including for the purpose of evaluating Proposals and the preparation of associated agreements.

Roads and Maritime Services will retain copies of Proposals, evaluation information and other materials as required by Roads and Maritime Services or NSW Government policies and processes.

8.4 RMS Confidential Information & Public Statements

Confidential information includes all information of Roads and Maritime Services or contained in this RFP or subsequently provided by it on a confidential basis other than information which is or becomes public knowledge (unless through a breach of confidentiality by the Proponent).

Proponents may disclose confidential information to their employees, agents, contractors and advisors (“disclosees”) strictly on a need to know basis and solely for the purposes of evaluating the contents of this RFP, preparing a Proposal and negotiating any resulting contract PROVIDED THAT they first obtain from the disclosees, and provide to Roads and Maritime Services, an executed confidentiality undertaking in favour of Roads and Maritime Services in the following form

- **Attachment 2 – Confidentiality Undertaking** (for use by Proponent’s own staff)
- **Attachment 3 – Confidentiality Deed Poll** (for use by anyone other than Proponent’s staff)

Proponents are also permitted to disclose confidential information to the extent required by law. However, prior to any such disclosure the Proponent must notify Roads and Maritime Services in writing and allow, to the extent legally possible, a reasonable period for Roads and Maritime Services to consider whether they wish to require the Proponent to challenge the grounds for the disclosure or seek conditions to be placed on the disclosure.

Otherwise, Proponents must not use or disclose Roads and Maritime Services confidential information.

Roads and Maritime Services may require Proponents to return or destroy all copies of this RFP and any other confidential information Roads and Maritime Services has provided to Proponents. Proponents must promptly comply with this request and provide a written certification of destruction (if so directed in writing).

Proponents may not make any announcement or release any information regarding this RFP (including that it has been sent to Proponents) without Roads and Maritime Services’s prior written consent. This does not preclude a Proponent which is public listed company from reporting to the ASX provided Roads and Maritime Services has notified it of acceptance of its Proposal by the issue of a formal letter of acceptance. Notification of shortlisting or of being the preferred Proponent is not sufficient.

8.5 Proponent Confidential Information

Proponents should clearly identify any confidential information they have provided as part of their Proposal, including information about the Proponent and its products, services and customers. Such information will not be confidential if Roads and Maritime Services already knows the information, it is public knowledge or Roads and Maritime Services has already obtained the information on a non-confidential basis.

Proponents must not mark the whole or substantially the whole of their Proposal as confidential. Proponents must not claim confidentiality for any part of Proposal which is not genuinely confidential.

Roads and Maritime Services shall in appropriately secure and safeguard all Proponent’s provided documentation and shall keep all declared confidential information confidential. Proponents agree that Roads and Maritime Services may disclose any information in their Proposals (including Proponent confidential information) to Roads and Maritime Services’ employees, agents, contractors or advisors on a need to know basis and for the purpose of evaluating or clarifying a Proposal or negotiating any resulting contract.

If there is any conflict or inconsistency between Roads and Maritime Services’s obligations of confidentiality to the Proponent and Roads and Maritime Services’s obligations of disclosure, as referred to in clause 8.6 below, Roads and Maritime Services’s obligations of disclosure shall prevail to the extent of the conflict or inconsistency.

8.6 GIPA Act and Contract and Tender Reporting

Notwithstanding any provision of this Part A, Roads and Maritime Services may disclose any information in a Proposal and any resulting contract to the extent that Roads and Maritime Services is required to do so by law, including under the *Government Information (Public Access) Act 2009* (NSW) or by a valid requirement of a government agency. Disclosure obligations may change over time, but Proponents should be aware that the following types of information may be required to be disclosed:

- (a) the name and business address of the Contractor and details of any related bodies corporate that will be involved in carrying out the obligations of the Contractor under any contract resulting from this RFP;

- (b) in relation to this RFP, the method of submitting Proposals and a summary of the criteria against which the various Proposals were assessed;
- (c) details of any resulting contract from the RFP process (including a description of the goods/services to be provided, commencement date of the resulting contract, the term of the resulting contract, and a description of any provisions in the resulting contract which may be subject to variation or renegotiation); and
- (d) the price payable by us under the resulting contract and the basis for future changes in this price.

Detailed information about the disclosure obligations of NSW government agencies is set out in the guidelines published by the Information and Privacy Commission. These guidelines can be accessed at <http://www.ipc.nsw.gov.au/education-and-resources>

Notwithstanding anything else, we may disclose information as required under any NSW Government tender disclosure requirements including those in [Premier's Memorandum 2007-01](#)

8.7 No collusion

In preparing a Proposal, Proponents must not communicate (verbally or otherwise), have any arrangement or arrive at any understanding with any other Proponent concerning the RFP. Proponents must not engage in practices that might be regarded as collusive or anticompetitive.

8.8 Disclaimer

This RFP contains statements based on information or data that Roads and Maritime Services believes to be reliable as at the date of publication. Roads and Maritime Services makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in this RFP. Proponents are responsible for forming their own independent judgements, interpretations, conclusions, and deductions about any information or data in this RFP, and Proponents should examine all information relevant to the risks, contingencies and other circumstances that could affect their Proposal. Roads and Maritime Services will not be liable to Proponents if Proponents rely on any information or data in this RFP.

8.9 Reliance on statements

Roads and Maritime Services may rely on any statements made by Proponents (including their employees, contractors, advisors and agents). The statements Roads and Maritime Services may rely on include those contained in Proposals, those made in any written or verbal communications and in any negotiations with Roads and Maritime Services. If Roads and Maritime Services believes any Proponent has made any false or misleading statements, Roads and Maritime Services may in its absolute discretion exclude the relevant Proposal from the evaluation process at any time.

8.10 Unlawful acts and improper assistance

Proponents (and their employees, contractors, advisers and agents) must not offer any form of inducements to Roads and Maritime Services or exhibit undue pressure (including any duress) on either entity, their employees or advisors in connection with this RFP process. Roads and Maritime Services may exclude a Proposal from consideration where Roads and Maritime Services believes it has been compiled using information improperly or unlawfully obtained from Roads and Maritime Services or with the improper assistance of any person currently or previously associated with .

8.11 Prime contractor, subcontractors and suppliers

Where the involvement of another party or parties will provide a more substantial and complete solution for Roads and Maritime Services, Proponents may involve that other party or parties in proposing that solution. Proponents should disclose the nature of the relationship with the other party or parties to Roads and Maritime Services and the Proposal must include the details specified in **Part D Proponents Response**.

If a Proposal is successful, Roads and Maritime Services will require the Proponent to contract as prime contractor. If there are other parties involved which the Proponent has have disclosed in its Proposal, then the Proponent may be required to subcontract with them and will be responsible to Roads and Maritime Services for the performance of those parties.

8.12 Piggybacking

If a government sector agency or any other statutory body corporate representing the Crown (as defined in the *Government Sector Employment Act 2013*) requests the successful Proponent to provide goods or services to it similar to the goods or services the subject of this RFP then the successful Proponent agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms in its Proposal having regard to any necessary changes (including scope and service levels).

8.13 Limitation of liability

To the extent permitted by law, Roads and Maritime Services is **not** liable for:

- (a) any incorrect or misleading information, or omission to disclose information;
- (b) anything arising out of Roads and Maritime Services's exercise, or failure to exercise, any rights under this RFP;
- (c) any decision by Roads and Maritime Services to discontinue or otherwise vary the RFP documents or process;
- (d) any decision by Roads and Maritime Services to reject any or all Proposals, or to shortlist or negotiate with one or more Proponents (irrespective of whether any other proposal complies with the requirements of this RFP);
- (e) any decision by Roads and Maritime Services to enter into a contract in respect of the subject matter of this RFP with any Proponent (irrespective of whether that Proponent's Proposal complies with the requirements of this RFP or whether any other Proposals comply);
- (f) any costs, losses or expenses incurred by any Proponent in relation to the development, preparation and submission of its Proposal; or
- (g) any misunderstanding arising from the failure by a Proponent to observe the requirements of this RFP.

ATTACHMENT 1

BACKGROUND ON ROADS AND MARITIME SERVICES

Legal Status

Roads and Maritime Services is a NSW government agency incorporated on 1 November 2011 under the Transport Administration Act 1988 (NSW) as the successor of the former Roads and Traffic Authority of New South Wales and NSW Maritime Authority. RMS is a multi-modal transport agency within the broader Transport cluster that has Transport for NSW (TfNSW) at its centre.

Primary Responsibilities

TfNSW has responsibility for transport policy, planning and coordination functions, and the oversight of infrastructure delivery and asset management. In this framework Roads and Maritime's primary responsibilities are to:

- Manage the road network and travel times.
- Provide capacity and maintenance solutions for road and maritime infrastructure.
- Test and licence drivers and vessel operators, and register and inspect vehicles and vessels.
- Improve road and maritime safety.

Core Values

Our core values are:

- Customer focus – We place the customer at the centre of everything we do.
- Collaboration – We value each other and create better outcomes by working together.
- Solutions – We deliver sustainable and innovative solutions to NSW transport needs.
- Integrity – We take responsibility and communicate openly.
- Safety – We promise safety for our people and our customers.

Reporting

Roads and Maritime reports to:

- the Transport Secretary,
- the Minister for Roads, Maritime and Freight and
- the Minister for Transport.

Further Information

Detailed information on RMS is available in our Annual Report which you can download at <http://www.rms.nsw.gov.au/about/corporate-publications/index.html>

ATTACHMENT 2
CONFIDENTIALITY UNDERTAKING BY PROPONENT'S STAFF



CONFIDENTIALITY UNDERTAKING

PROponent (EMPLOYER) NAME

EMPLOYEE NAME

EMPLOYEE ADDRESS

RFP/REOI Request for Proposal or Request for Expression of Interest issued by Roads and Maritime Services (RMS) for _____

APPROVED PURPOSE To assist the Proponent with developing a Proposal for the RFP/REOI

BACKGROUND

- RMS has issued the above RFP and made certain confidential information available to the Proponent.
- RMS confidential information is all information about RMS and the RFP which is not in the public domain.
- The Proponent wants to share confidential RMS information with the Employee in order to consider the RFP invitation and to prepare a Proposal to submit to RMS.
- The terms of the RFP require that the Proponent not share RMS confidential information with employees unless the employees sign a Confidentiality Undertaking.

PROMISES BY THE EMPLOYEE

The above named Employee promises as follows for the benefit of RMS:

1. to keep the RMS Confidential Information confidential and only use it for the above Approved Purpose;
2. unless required by law, not to disclose the RMS Confidential Information to anyone else

NOTE: anyone else requesting access to the Confidential Information must contact the Proponent (Employer) to obtain the Confidential Information.

.....
Signed Date

Print name

NOTE TO EMPLOYER: only use this form when sharing RMS information with your own staff. If you need to share RMS information with contractors and advisers then you must use Attachment 3 Confidentiality Deed

Attachment 3 - Confidentiality Deed for Proponent's Contractors (non-employees)



**Transport
Roads & Maritime
Services**

Confidentiality Deed Poll

RMS (Owner of confidential information)	Roads and Maritime Services (ABN 76 236 371 088) ("RMS") 20 Ennis Rd, Milsons Point, NSW 2061, Australia
Recipient of confidential information	Recipient Name: ACN & ABN: Address: Attention:
Approved Purpose (see clause 2.1)	Prepare a Proposal to submit to RMS in connection with the Tender
Tender	[Insert name of RMS Tender invitation]

You (the Recipient) covenant as follows:

1 What is the Confidential Information?

1.1 The Confidential Information governed by this agreement is information which you obtain from us in connection with the Approved Purpose (whether or not recorded in any form). It also includes all information relating to our business policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property. It also includes information directly or indirectly derived from that information.

1.2 It does not include information which:

- (a) is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent);
- (b) was already lawfully known to you on a non-confidential basis;
- (c) is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
- (d) is independently developed by you without access to the Confidential Information.

1.3 The Confidential Information always remains RMS's property. This agreement does not give you any right, title or interest in it.

2 Your use of Confidential Information

- 2.1 You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose, or allow any other person to do so without our written consent.
- 2.2 You must not disclose the Confidential Information to any other person without our prior written consent. If we consent then you must ensure that other person signs a confidentiality agreement on the same terms as this agreement and you remain responsible for their actions.
- 2.3 You may disclose the Confidential Information to your employees and contractors on a strict need-to-know basis for the Approved Purpose provided you expressly inform them that it is RMS Confidential Information and you ensure that they owe you legally enforceable confidentiality obligations in respect of it. At any time we may require that you obtain a confidentiality undertaking from those persons in our favour.
- 2.4 You may disclose the Confidential Information as strictly required by law but you must inform us first

and seek to limit the terms of that disclosure in any manner we reasonably request.

2.5 You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.

2.6 You must inform us as soon as possible if:

- (a) you become aware or suspect that there has been any unauthorised disclosure or use; or
- (b) you are required to disclose the information by law.

2.7 You must return or destroy (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.

3 General

3.1 This agreement contains the entire agreement between both of us in relation to the Confidential Information and supersedes all other discussions, representations and statements about the Confidential Information.

3.2 This agreement may be varied or waived only if we both agree in writing.

3.3 You must not assign your rights or obligations under this agreement without our prior written consent.

3.4 If we do not exercise a right at any time in connection with a default under this agreement, this does not mean that we have waived the right or cannot exercise it later.

4 Privacy

If you obtain any Personal Information from us or collect it on our behalf then you must comply with any reasonable directions which we give you in connection with our privacy obligations and you agree to comply with the Australian Privacy Principles under the Privacy Act (1988) irrespective of whether or not you are subject to that Act.

5 Governing law

The laws of New South Wales, Australia, govern this agreement and we both submit to the non-exclusive jurisdiction of the courts of that place.

6 Indemnity

You undertake to indemnify us against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by you of this Deed; or
- (b) any act or omission by any of your representatives which, if done or omitted to be done by you, would be a breach of your obligations under this Deed.

7 Injunction

You agree that damages are not a sufficient remedy for RMS for any breach of this agreement and RMS is entitled to specific performance or injunctive relief.

8 End of this agreement

This agreement ends when:

- (a) we notify you in writing it ends; or

- (b) it is replaced by a later agreement which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

9 Definitions

In this agreement, unless the contrary intention appears:

Approved Purpose means the purpose described on the front page of this agreement.

Confidential Information has the meaning as described in clause 1 of this agreement.

Personal Information has the same meaning it has in the Privacy Act (1988).

we and us and our means Roads and Maritime Services.

you means the person named on page 1 as the recipient of Confidential Information.

Signed by the Recipient by its authorised representative in the presence of

Signature of _____

Witness: _____

Name: _____

Signature of Authorised Representative

Name: _____

Title/Position: _____

Date: _____

Part B: Scope of Works

1 Introduction

This RFP relates to the procurement of 425 portable weigh scales for heavy vehicle enforcement.

2 Objectives

Roads and Maritime Services is seeking to replace its fleet of portable weigh scales.

3 Background/context

Portable weigh scales are used to weigh heavy vehicles in NSW to meet regulatory and road safety requirements. These portable weigh scales are end-of-life and now require replacement.

4 Scope

This section describes the performance requirements for Portable Weighing Scales (hereafter referred to as "PWS"). PWS allow Roads and Maritime Services to carry out heavy vehicle enforcement operations. This specification lists two values for certain performance parameters. The threshold [T] is the minimum acceptable level. The objective [O] is the desired level of performance. When only one requirement is stated, it is the threshold requirement.

4.1 Applicable Documents

The PWS must meet both International Specifications and Australian Standards, as per the documents listed in this section below. This section does not include documents cited in other sections of this specification or recommended for additional information or as examples. While every effort has been made to ensure the completeness of this list of documents, users are cautioned that they must meet all specified requirements of the documents cited below, whether or not they are listed.

International Specifications

- OIML R 76 Non-Automatic Weighing Instruments

Australian Standards

- AS 60529 Degrees of protection provided by enclosures (IP Code)

4.2. Material requirements

- 4.2.2 The PWS frame shall be corrosion resistant aluminium or aluminium alloy [T]
- 4.2.3 The PWS load cell shall be stainless steel [T]
- 4.2.4 The PWS display shall be a backlit liquid crystal display (LCD) [O]

4.3 Operating requirements

- 4.3.1 The PWS shall be certified to OIML 76 Class 4 with an accuracy of +/- 35kg (with a 10-tonne load) [T]
- 4.3.2 The PWS shall be battery-operated. The supplied PWS charger shall allow charging of six scales simultaneously. [T]
- 4.3.3 The PWS charging time must be less than 2 hours, from 0% to 100% charge [T]
- 4.3.4 The PWS charger shall not exceed 300 millimetres in height, 300 millimetres in width and 150 millimetres in depth [T]

- 4.3.5 The PWS charging leads shall have a minimum length of 400 millimetres [T]
- 4.3.6 The PWS charger shall enable mounting on and removal from a vehicle frame [T]
- 4.3.7 The PWS charger and leads must meet relevant Australian Standards [T]
- 4.3.8 The PWS shall be static weigh scales [T]
- 4.3.9 The PWS must be configured with a 50kg weight resolution [T]
- 4.4 Physical Characteristics
 - 4.4.1 The PWS width shall not exceed 810 millimetres, including handles, screen, and any modifications [T]
 - 4.4.2 The PWS length shall not exceed 520 millimetres, including handles, screen, and any modifications [T]
 - 4.4.3 The PWS height shall not exceed 45 millimetres [T]
 - 4.4.4 The PWS total weight shall not exceed 18 kilograms [T]
 - 4.4.5 The PWS shall be fitted with a handle manufactured from the same material as the frame. The handle shall be between 100 millimetres and 140 millimetres from the frame. [T]
 - 4.4.6 The PWS shall be fitted with castor wheels with a stainless steel bracket welded to the scale. The wheels shall be fillet-welded to the PWS frame. [T]
- 4.5 Environmental Operating Requirements
 - 4.5.1 The PWS shall achieve a minimum degree of protection of IP65 [O]
 - 4.5.2 The PWS operating temperature range shall be -20°C to +40°C [O]

5 Deliverables

425 Portable weigh scales and 70 weigh scale chargers (each charger has 6 charging leads)

The following additional documentation is required as part of the Returnable Schedule 3. Failure to provide the documentation listed below will result in the submission being considered invalid. The additional documentation includes:

- 5.1 Evidence that you are the authorised distributor in NSW for the nominated weigh scale
- 5.2 Dimension drawing(s) of the portable weigh scale
- 5.3 Technical specification sheet of the portable weigh scale.
- 5.4 Warranty terms, confirming a 12-month replacement on faulty scales
- 5.5 OIML certification and IP rating certification
- 5.6 ISO9001 Certification (from scales manufacturer)

6 Milestones

The following are the key milestones that are to be delivered.

Description	Indicative date for delivery
Milestone 1 –Physical delivery and receipt of 425 portable weigh scales and 70 chargers	Before 30 th June 2019

7 Service Levels

Refer to Section 4

8 Other information

- (a) We estimate the quantity to be delivered is 425 portable weigh scales and 70 weigh scale chargers
- (b) We require the goods to be delivered at an address to be provided at contract execution.
- (c) Payment will be on successful delivery of milestones.
- (d) Financial security
- (e) Compliance with codes

9 Other documents

Nil

Part C: Proposed Contract

The Proposed Contract is *Goods and Services Agreement for procurement of portable weigh scales for heavy vehicle enforcement*. The Proposed Contract is attached below.

If a Proponent requires any changes it must mark up the Proposed Contract using track changes to show the precise change. Roads and Maritime Services has a strong preference that no changes be made to the Proposed Contract and may take changes into account in the course of evaluating a Proposal.



Goods and Services.
Agreement.pdf

Part D: Proponent’s Response

Proponents must complete the cover page of the Proposal and the Returnable Schedules in this Part D in full and submit it in accordance with Part A – Terms of Participation.

Cover Page for Proposal
Proposal in response to
Request for Proposal for the procurement of
portable weigh scales for heavy vehicle
enforcement

RFP Number: RMS 2018/001

Part D

Returnable Schedules

Section 1 – Proponent's details

Name of Proponent	Novation Engineering Pty Ltd
--------------------------	------------------------------

Section 2 – Proposal details

Name of Proposal	RMS 2018/001 Novation Engineering
Date of Proposal	30/08/2018

Section 3 – Required attachments

Proponents to confirm they have completed the following Returnable Schedules:

(Please check)	Document/Returnable Schedule
<input checked="" type="checkbox"/>	Cover page for Proposal (this page)
<input checked="" type="checkbox"/>	Returnable Schedule 1 – Form of Proposal
<input checked="" type="checkbox"/>	Returnable Schedule 2 – Organisational strategic and financial capability
<input checked="" type="checkbox"/>	Returnable Schedule 3 – Demonstrated ability to perform the Services and Compliance with the Scope of Works
<input checked="" type="checkbox"/>	Returnable Schedule 4 - Proposed project management methodology and ability to achieve the Milestones
<input checked="" type="checkbox"/>	Returnable Schedule 5 - Price
<input checked="" type="checkbox"/>	Returnable Schedule 6 - Proponent financials
<input checked="" type="checkbox"/>	Returnable Schedule 7 - Acceptance of Proposed Contract
<input checked="" type="checkbox"/>	Returnable Schedule 8 - Other parties

Returnable Schedule 1

Proponent Particulars & Undertaking

1.1 Introduction

This Returnable Schedule 1 and all of the other Returnable Schedules in this RFP must be completed by the Proponent, and together with any further information provided by the Proponent will constitute its Proposal to this RFP.

1.2 Proponent's details

Please complete the following details in respect of the Proponent.

Response	
Legal Name of Proponent	Novation Engineering Pty Ltd
Trading Name	Novation Engineering Pty Ltd
ACN of Proponent	608485409
ABN of Proponent	50605485409
Registered office address	21 Stanford Circuit Rouse Hill
<p>Is the business operated under a Trust ?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>* Note to Proponents: If the business operates as a Trust then before the Contract is awarded the Proponent will be required to provide (at its cost) a Declaration from the Trustee and a Certification from a lawyer concerning the Trust Deed. Roads and Maritime Services will provide the template Declaration and Certification forms.</p>	<p>Trust Name: _____</p> <p>Trust ABN: _____</p> <p>Note to Proponents: Where your business operates as a trust the Trustee of the Trust should be named as the Proponent. The ACN of the Trustee Proponent will be different from the CAN of the Trust business.</p>
<p>Details of a representative of Proponent who is authorised to represent and legally bind the entity:</p> <ul style="list-style-type: none"> Name Title Current telephone number Facsimile number Email address 	<ol style="list-style-type: none"> Stephen Thammiah Managing Director +61 449144125 Novationengineering@bigpond.com
<p>Details of a representative of Proponent who is authorised to act as point of contact in respect of any RFP inquiries generated by Roads and Maritime Services :</p> <ul style="list-style-type: none"> Name Title Current telephone number Facsimile number Email address 	<ol style="list-style-type: none"> Stephen Thammiah Managing Director +61 449144125 Novationengineering@bigpond.com

1.3 Disclosure of Conflicts of Interest

(a) Please indicate whether as at the date of submission of this Proposal the Proponent has any actual or potential Conflict of Interest in relation to the Proponent's participation in the RFP process or the supply of the goods or services to Roads and Maritime Services.

Response

- ☒ No – to be selected if no actual or potential Conflict of Interest exists as at the date of submission of this Proposal.
- ☐ Yes – to be selected if an actual or potential Conflict of Interest exists as at the date of submission of this Proposal.

(b) If the response to the question in section 1.3 is “yes”, please provide full details of the Conflict of Interest below.

Response

1.4 Addenda

Please ensure that the Proponent has checked for any addenda to this RFP prior to submission of its Proposal. Please indicate below the addenda to this RFP (if any) that have been addressed in the Proposal.

Response

- ☐ Yes – the Proponent has received the following Addenda from Roads and Maritime Services amending or supplementing this RFP *[list them]*
- ☒ No – the Proponent has not received any Addenda from Roads and Maritime Services amending or supplementing this RFP

1.5 Compliance with Mandatory Conditions

Please indicate Proponent's full compliance with all mandatory conditions set out in section.

Response

- ☒ Yes – Proposal complies with all Mandatory Conditions in the Scope of Works.
- ☐ No – Proposal does not comply with the following listed Mandatory Conditions:

1.6 Material qualifications or assumptions not included in any other Returnable Schedule

Please set out any qualifications or assumptions that are material to the Proposal for which no opportunity to respond has been provided elsewhere in the Returnable Schedules. Do not add standard disclaimers or the like.

Response

1.7 Execution of Proposal

Please complete the following form as a Proponent responding as a single entity, or as the prime contractor if the Proponent is part of a consortium.



Execution Of
Proposal Signed.pdf

UNDERTAKING BY PROPONENT

I, Stephen Thammiah of 21 Stanford Circuit Rouse Hill 2155 (the **Authorised Representative**) certify as the date of the submission of this Proposal that:

- (a) I hold the position of Managing Director and am duly authorised by Novation Engineering (ABN: 50608485409) (the **Proponent**) to certify the matters set out herein;
- (b) except as specified in the Proponent’s response to Paragraph 1.3(b) of Returnable Schedule 1, no actual or potential Conflict of Interest exists in relation to the Proponent’s participation in the RFP Process;
- (c) the Proponent and its related bodies corporate have not and will not engage in conduct which is collusive, anti-competitive, corrupt and/or unethical in connection with the RFP process;
- (d) the Proponent agrees to be bound by the provisions of the RFP; and
- (e) the Proponent represents, warrants and undertakes that:
 - (i) the information in this Proposal is true, accurate and complete and not misleading; and
 - (ii) the Proponent is aware of, and will comply with, the requirements of the Goods and Services Procurement Policy Framework For NSW Government Agencies.

SIGNED for and on behalf of the Proponent by its Authorised Representative, who warrants by his/her execution that he/she has all necessary authority to sign this document for and on behalf of the Proponent, in the presence of:

Signature of Authorised Representative

Signature of Witness

Position


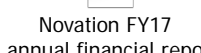
Name of Witness

Date

Returnable Schedule 2

Organisational strategic and financial capability

2.1 Organisational strategic and financial capability	
2.1.1 Information requested	<p>Please provide an overview of your organisation, including:</p> <ol style="list-style-type: none"> 1. Ownership 2. Key staff 3. Governance 4. Management structures and any subsidiaries 5. Paid up capital 6. Total revenue in Australia and globally 7. Number of permanent employees in Australia and globally 8. Number of individual contractors in Australia and globally who are currently performing services on behalf of the Proponent 9. Where your organisation has an ultimate holding company, whether the ultimate holding company will guarantee the performance of your organisation's obligations to Roads and Maritime Services under a contract for the Services. <p>Please also provide the information in points 1-9 above for any subcontracted organisations on which you intend to rely to perform a material part of the Services. Note that Roads and Maritime Services may commission an independent financial assessment of any Proponent and the Proponent must co-operate by providing such information as is reasonably necessary.</p>
2.1.1 Response	<ol style="list-style-type: none"> 1. Ownership <i>Novation Engineering is a private held company by its directors.</i> 2. Key staff <i>Director – Stephen Thammiah</i> <i>Business Development Manager- Karasen Naidu</i> <i>Accountant – Sylvester Tan</i> 3. Governance <i>Novation Engineering's corporate governance are principles-based and recognize that governance practices depend on its size; ownership structure; nature, scope and complexity of operations; strategy; and risk profile.</i> 4. Management structures and any subsidiaries <i>N/A</i> 5. Paid up capital <i>\$250000</i> 6. Total revenue in Australia and globally <i>FY17/18 +\$1000000</i> 7. Number of permanent employees in Australia and globally <i>Two</i>

2.1 Organisational strategic and financial capability	
	<p>8. Number of individual contractors in Australia and globally who are currently performing services on behalf of the Proponent</p> <p><i>Six</i></p> <p>9. Where your organisation has an ultimate holding company, whether the ultimate holding company will guarantee the performance of your organisation's obligations to Roads and Maritime Services under a contract for the Services.</p> <p><i>Australia</i></p>
2.1.2 Information requested	Please provide details of any current or historical legal disputes which might impact your ability to perform the Services.
2.1.2 Response	<i>None</i>
2.1.3 Information Requested	Please provide audited financial statements for the past three years and <u>complete [Returnable Schedule 8]</u> . Please also provide the same information for any subcontracted organisations on which you intend to rely to perform a material part of the Services.
2.1.3 Response	<p><i>FY 2015/16: Attachment:</i>  annual financial report</p> <p><i>FY 2016/17: Attachment:</i>  Novation FY17 annual financial report</p> <p><i>FY 2017/18: This last financial year has just completed and the financial statements will be ready in October 2018. Novation can provide this to RMS at any time as requested.</i></p> <p><i>No sub-contractors will be used to deliver the PWS's to RMS.</i></p>
2.1.4 Information Requested	Please describe your strategic capability – particularly as it relates to the performance of the Services
2.1.4 Response	<i>For a previous tender of 125 scales in 2018, Novation Engineering managed to adapt manufacturing timeframes to meet a short deadline of delivery. Our program management skill sets provide the customer with the ability to strategically meet project requirements.</i>

2.2 Material qualifications or assumptions	
2.2.1 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
2.2.1 Response	<i>NA</i>

2.3 Insurances

2.3.1 Information requested This table sets out Roads and Maritime Services' insurance requirements and asks for Proponents to specify their current insurance and to confirm that they will increase their insurance to meet Roads and Maritime Services requirements if they are awarded the Contract



	Type of insurance	Roads and Maritime Services Minimum Cover Requirement	Name of Proponent's Current Insurer	Proponent's Current \$ Cover (Specify if it is per claim or in the aggregate).	Proponent will agree to update insurance to meet Roads and Maritime Services requirements
2.3.2 Proponent Response	Product Liability	\$10m for each claim	Calibre Commercial Insurance Pty Ltd	Per claim	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Public Liability	\$10m for each claim	Calibre Commercial Insurance Pty Ltd	Per claim	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Professional Indemnity	\$1m for each claim			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Workers Compensation				
	Contract Works	[contract value + 15%]			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Service Provider	[\$7M*] for each claim	Calibre Commercial Insurance Pty Ltd	Per claim	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Personal Accident and Illness	Minimum 104 weeks if the Proponent is a Sole Trader otherwise not applicable	N/A		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	[other please insert]				<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>NOTES: Personal Accident & Illness insurance is required for Sole Traders as Workers Compensation insurance will only cover the employees of a Sole Trader and not the Principal.</p> <p>Only the following insurers are approved by Roads and Maritime Services:</p> <ul style="list-style-type: none"> * An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; * Lloyds Underwriters. <p>If the Proponent insures with another insurer then the Proponent should effect a "fronting" policy with one of the above approved insurers</p>				



Returnable Schedule 3




Demonstrated ability to perform the Services and compliance with the Scope of Works

3.1 Demonstrated ability to perform the Services	
3.1.1 Information requested	Please demonstrate your ability to provide goods with a minimum usable life span of 10 years by listing no fewer than ten (10) highways agencies from around the world that have used the tendered scales (or equivalent previous models) for 10+ years..
3.1.1 Response	<p><i>The PAT/IRD SAW portable weigh scale has been utilised in over 10 countries around the world for more than 30 years. It has been leading trusted brand for governments around the world to regulate its heavy vehicle fleet. These scales are world renowned for being the most durable and reliable in the world with little to no out of schedule maintenance required for its useable lifetime of 20 years. The following countries have utilised the SAW PAT/IRD scales since 1990 with an average useable life of 20 years:</i></p> <ol style="list-style-type: none"> 1. Poland 2. Germany 3. Romania 4. Austria 5. Korea 6. Taiwan 7. Australia 8. New Zealand 9. Spain 10. USA 11. Canada 12. Chile 13. Mexico 14. Pakistan 15. UAE 16. Fiji
3.1.2 Information requested	<p>Please provide details of the two clients that can verify the information you have provided in response to section 3.1.1 of this Returnable Schedule. Details should include, at a minimum: name the clients' organisation, project, position, email, address, phone number.</p> <p>Please note that Roads and Maritime Services may contact referees without further reference to the Proponent.</p>
3.1.2 Response	


	<p>Referee contacts:</p> <p>1. Country: Spain Organisation: Tecbas Position: Managing Director Contact: Jose Antonio Laguna : Tecbas@tecbas.es</p> <p>2. Country: Taiwan Organisation: Central Pacific Co. Position: Commercial Manager Contact: Angela Lin: angela@cpco.com.tw</p>		
3.1.3 Informa tion request ed	Please describe how you intend to perform the Services having regard to every numbered section of Part B.		
3.1.3 Respon se	<p><i>The scope of works in Part B requires manufacturing of 425 custom sized portable weigh scale to meet RMS's requirements. Novation Engineering has provided this tender submission following new engineering of the portable weigh scales to meet the custom size required by RMS. We have confirmed manufacturing and freight timelines and can confirm the scales can be delivered to Australia before 30th June 2019 as required.</i></p> <p><i>All items in the scope of works including material requirements, operating requirements, physical characteristics, environmental operating requirements and deliverables as listed in Part B have been meet by the SAW 10 AIII scale which Novation Engineering has submitted as a response to this tender.</i></p>		
3.2 Compliance with the Scope of Works			
3.2.1 Informati on requeste d	<p>Please indicate the extent to which your Proposal satisfies each numbered section of the Scope of Works using the template table below by entering one of the following options</p> <p>Yes – means your response fully conforms to the requirement.</p> <p>No – means an inability or refusal to meet a requirement on any terms.</p> <p>Partial – means your response partially conforms to the requirement but also imposes different, modified or additional terms with respect to that requirement or involves a different solution or solutions to the requirement.</p> <p>Where you state “<i>Partial</i>” you should provide full details of the extent of the compliance, the additional or different terms imposed and any alternatives offered.</p> <p>In all cases, you should provide information as to how you propose to meet each requirement described in Part B in sufficient detail to enable Roads and Maritime Services to assess your understanding of, and ability to meet its requirements.</p>		
3.2.2 Respons e	Part B section	Compliance (Yes, No, Partial)	How requirement is satisfied and extent of non-compliance

	4.1 Applicable Documents	Yes	All applicable documents provided in this RFP document.
	4.2 Material Requirements	Yes	<p>4.2. Material requirements:</p> <p>4.2.2 The PWS frame shall be corrosion resistant aluminium or aluminium alloy: <i>Yes, the PAT/IRD SAW 10A III scale meets these requirements. Specifications sheet is attached here.</i></p>  <p>SAW 10AIII Spec Sheet.pdf</p> <p>4.2.3 The PWS load cell shall be stainless steel: <i>Yes, the SAW 10A III scale's load cell is made from stainless steel.</i></p> <p>4.2.4 The PWS display shall be a backlit liquid crystal display (LCD): <i>Yes, the PWS's display is a backlit LCD screen.</i></p>
	4.3 Operating Requirements	Yes	<p>4.3 Operating requirements</p> <p>4.3.1 The PWS shall be certified to OIML 76 Class 4 with an accuracy of +/- 35kg (with a 10-tonne load): <i>Yes, the SAW 10A III has a OIML 76 Class 4 certificate(attached here) with an accuracy of +/-30kg at 10tonnes capacity.</i></p>  <p>OIML.pdf</p> <p>4.3.2 The PWS shall be battery-operated. The supplied PWS charger shall allow charging of six scales simultaneously: <i>Yes, the SAW 10A III is battery operated. The supplied charger can charge 6 PWS's simultaneously in under 2 hours.</i></p> <p>4.3.3 The PWS charging time must be less than 2 hours, from 0% to 100% charge: <i>Yes, the SAW 10A III's supplied charger can charge 6 PWS's simultaneously in under 2 hours from 0-100%. The average total charge time is 1.5hours.</i></p> <p>4.3.4 The PWS charger shall not exceed 300 millimetres in height, 300 millimetres in width and 150 millimetres in depth: <i>Yes, the charger's dimensions are 216mm x 114mm x 102 mm.</i></p> <p>4.3.5 The PWS charging leads shall have a minimum length of 400 millimetres: <i>Yes, all charging leads are 457mm in length.</i></p> <p>4.3.6 The PWS charger shall enable mounting on and removal from a vehicle frame: <i>Yes, the SAW 10A III's charger can be mounted and easily removed from a vehicle frame.</i></p> <p>4.3.7 The PWS charger and leads must meet relevant Australian Standards: <i>Yes, the SAW 10A III's charger and leads meet all relevant Australian standards.</i></p> <p>4.3.8 The PWS shall be static weigh scales: <i>Yes, the SAW 10A III is a static portable weigh scale.</i></p>

			<p>4.3.9 The PWS must be configured with a 50kg weight resolution: <i>Yes, the SAW 10A III will be configured to have a 50kg weight resolution.</i></p>
	4.4 Physical Requirements	Yes	<p>4.4 Physical Characteristics</p> <p>4.4.1 The PWS width shall not exceed 810 millimetres, including handles, screen, and any modifications: <i>Yes, the SAW 10A III including required customisations has a width of 808mm.</i></p> <p>4.4.2 The PWS length shall not exceed 520 millimetres, including handles, screen, and any modifications: <i>Yes, the SAW 10A III including required customisations has a length of 518mm.</i></p> <p>4.4.3 The PWS height shall not exceed 45 millimetres: <i>Yes, the SAW 10A III including required customisations has a height of 42mm.</i></p> <p><i>This attachment depicts the dimensions of the customised SAW 10A III PWS.</i></p> <p> dimensions.pdf</p> <p>4.4.4 The PWS total weight shall not exceed 18 kilograms: <i>Yes, the SAW 10A III including required customisations has a weight of 16kg.</i></p> <p><i>This attachment lists all of the specifications of the standard size SAW 10AIII PWS.</i></p> <p> SAWIII Brochure.PDF</p> <p>4.4.5 The PWS shall be fitted with a handle manufactured from the same material as the frame. The handle shall be between 100 millimetres and 140 millimetres from the frame: <i>Yes, the SAW 10A III has been customised for RMS and has a handle length of 120mm from the frame.</i></p> <p>4.4.6 The PWS shall be fitted with castor wheels with a stainless steel bracket welded to the scale. The wheels shall be fillet-welded to the PWS frame: <i>Yes, the SAW 10A III has been customised for RMS and has been fillet welded to the PWS frame. The wheel brackets are welded to the endplates. In turn, the endplates are screwed to the baseboards for maximum strength and durability. The below photo of the fillet welded castor wheels(with stainless steel bracket) was taken from the prototype of the customised SAW 10A III as required by RMS.</i></p>

				
4.5 Environmental Operating Requirements	Yes	4.5 Environmental Operating Requirements 4.5.1 The PWS shall achieve a minimum degree of protection of IP65: <i>Yes, the SAW 10AIII PWS has a IP65 rating for all hardware and connectors as also described in the previously attached brochure and spec sheet.</i> 4.5.2 The PWS operating temperature range shall be -20°C to +40°C: <i>Yes, the SAW 10AIII PWS has an operating temperature range of -20°C to +40°C.</i>		
5.1 Evidence that you are the authorised distributor in NSW for the nominated weigh scale	Yes	<i>This attachment is the sole license agreement(distributor agreement) which Novation Engineering has with IRD to sell and distribute PAT/IRD portable weigh scales in NSW, Australia.</i>  Distributor Agreement - IRD NE.		
5.2 Dimension drawing(s) of the portable weigh scale	Yes	<i>This attachment is the dimensions of the customised SAW 10A III PWS.</i>  dimensions.pdf <i>This photo is an actual photo of the customised SAW 10A III scale meeting all the requirements set out in this tender.</i>		

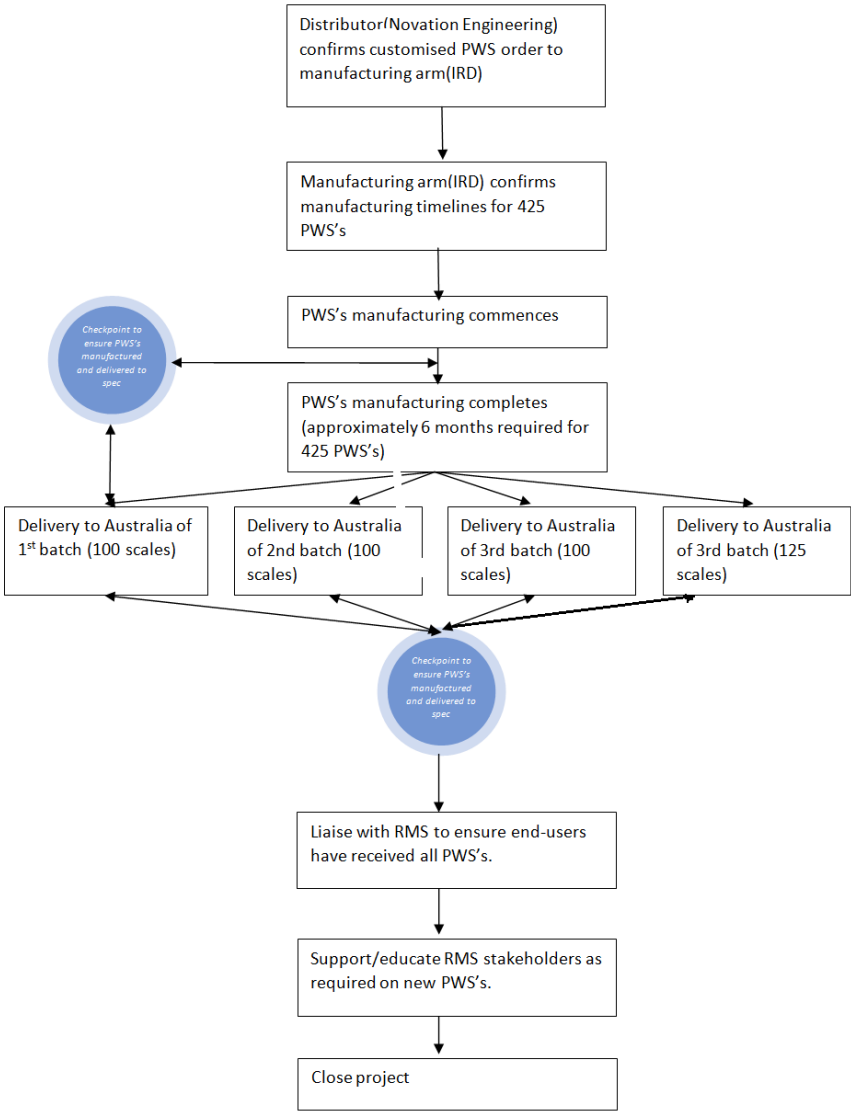
		
5.3 Technical specification sheet of the portable weigh scale.	Yes	<p><i>These attachments are the SAW 10AIII brochure and spec sheet, respectively.</i></p> <div><div><p>SAW10AIII Brochure.PDF</p></div><div><p>SAW 10AIII Spec Sheet.pdf</p></div></div>
5.4 Warranty terms, confirming a 12-month replacement on faulty scales	Yes	<p><i>Novation Engineering provides a 12 month replacement on faulty scales including all peripheral accessories such as chargers, leads.</i></p>
5.5 OIML certification and IP rating certification	Yes	<p><i>This attachment is the OIML certification for the SAW 10A III.</i></p> <div><p>OIML.pdf</p></div>

			<p><i>In regards to the IP rating, the minimum IP certification of the scales are associated to the part most susceptible to water/dust intrusion; the connectors. As such please find associated testing regime and rating of the connectors.</i></p> <div> <div> <p>VG95328, Miniatur, Metall, IP67</p>  <p>ITT ENGINEERED FOR LIFE Serie: KPT</p> <p>Details anzeigen</p> </div> <div> <p>PDF</p> <p>ITT-Cannon KPTC S6.pdf</p> </div> <div> <p>PDF</p> <p>ITT-Cannon-KPT-KP SE-KPTC-Catalog-021</p> </div> </div>
	5.6 ISO9001 Certificatio n (from scales manufactur er)	Yes	<p><i>This attachment is the ISO9001 certification for the SAW 10A III.</i></p> <div> <p>PDF</p> <p>ISO certificate 2018.pdf</p> </div>
3.2.3 Informati on requeste d	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule.		
3.2.3 Respons e	None		

Returnable Schedule 4

Proposed project management methodology and ability to achieve the milestones

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones	
5.1.1 Information requested	Please describe the project management methodology you propose to use to perform the Services.
5.1.1 Response	<p><i>Novation Engineering proposes using an agile project management methodology. This enables a flexible approach in order to meet the customers specific custom requirements and tight delivery deadlines such as this tender for 425 scales. Agile projects are characterized by a series of tasks that are conceived, executed and adapted as the situation demands. Being agile enables Novation Engineering to respond to unpredictability through incremental, iterative work processes where required.</i></p> <p><i>Novation Engineering is committed and guarantees delivery before the 30th June 2019 deadline.</i></p>
5.1.2 Information requested	<p>Please describe your proposed project delivery team structure including:</p> <ol style="list-style-type: none"> 1. The key resources organised into a delivery hierarchy; 2. The roles and responsibilities of each resource, including the teams they would be expected to manage; and 3. The roles and responsibilities of Roads and Maritime Services.
5.1.2 Response	<ol style="list-style-type: none"> 1. The key resources organised into a delivery hierarchy:

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones	
	 <pre> graph TD A[Distributor/Novation Engineering confirms customised PWS order to manufacturing arm(IRD)] --> B[Manufacturing arm(IRD) confirms manufacturing timelines for 425 PWS's] B --> C[PWS's manufacturing commences] C --> D[PWS's manufacturing completes approximately 6 months required for 425 PWS's] D --> E1[Delivery to Australia of 1st batch 100 scales] D --> E2[Delivery to Australia of 2nd batch 100 scales] D --> E3[Delivery to Australia of 3rd batch 100 scales] D --> E4[Delivery to Australia of 3rd batch 125 scales] E1 --> F((Checkpoint to ensure PWS's manufactured and delivered to spec)) E2 --> F E3 --> F E4 --> F F --> G[Liaise with RMS to ensure end-users have received all PWS's.] G --> H[Support/educate RMS stakeholders as required on new PWS's.] H --> I[Close project] </pre>
5.1.3 Information requested	Please provide examples of successful delivery of 100+ scales in the last 24 months and evidence that you are able to manufacture and deliver the nominated scale within the time nominated in Part B.
5.1.3 Response	<p><i>In January 2018, Novation Engineering was successful in a tender to procure 125 scales for RMS. All 125 SAW 10A III scales were delivered 2 months earlier than the deadline, which enabled RMS enforcement operations to continue seamlessly.</i></p> <p><i>The manufacturing arm(IRD) has confirmed 425 scales can be manufactured and delivered before the 30th June 2019 deadline.</i></p> <p><i>Additionally, the attached document(commercial invoice from the manufacturing arm) shows the export date of 7th June 2018 for the first batch if the above mentioned 125 scales. The PWS's arrived to RMS in Australia on 14th June 2018 which was 2 months earlier than the August 2018 deadline. This is evidence of our ability to deliver, even under very strict timelines.</i></p> <div data-bbox="497 1832 560 1888" data-label="Image"> </div> <p>commercial invoice.jpg</p>
5.1.4.Information requested	Please describe how the Proponent ensures knowledge and experience gained on previous projects is transferred to its employees that will be engaged on

5.1 Proposed methodology, approach and ability to achieve the Critical Milestones	
	subsequent projects, i.e. knowledge management systems.
5.1.4 Response	<i>Novation Engineering adopts a knowledge database(technical, commercial, financial, customer feedback, asset register) available in-house to ensure all employees are able to manage the required tasks required.</i>
5.1.5 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
5.1.6 Response	N/A

Returnable Schedule 5

Price

7.1 Fixed price				
Payment milestone	Deliverables linked to milestone	AUD GST exclusive price		
Contract Execution	Milestone payment 1: 50% Payment required at contract execution.	\$ 3,377,750 exc GST.		
Delivery: 425 portable weighing scales and 70 chargers (including delivery)	Milestone payment 2: 50% payment required at project completion(all 425 scales successfully delivered to RMS)	\$ 3,377,750 exc GST.		
	<u>Costs Breakdown</u>			
	Description	Price	Quantity	Total (AUD)
	SAW 10A series 3 – customised RMS Model	\$15,500.00	425	\$6,587,500
	Chargers(including all required leads and accessories)	\$2,400.00	70	\$168,000.00
				\$6,755,500 Excluding GST
Total price	\$6,755,500 total including 425 scales, chargers, leads, delivery, customs/taxes/duties.			

7.4 Discounts and rebates	
5.3.1 Information requested	Please provide details of any discounts or rebates that apply to the Fees and the circumstances under which they apply
5.3.1 Response	<i>None</i>
5.3.2 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule
5.3.2 Response	<i>None</i>

Returnable Schedule 6

Proponent Financials *

Please provide the Proponent's most recent:

- balance sheet;
- income statement; and
- statement of cash flows.

(or their equivalents) together with a letter from the Proponent's accountant or auditor addressed to Roads and Maritime Services verifying the Proponent's financial position is accurately reflected in the above documents.



Novation FY17

FY 2016/17: Attachment: annual financial report

FY 2017/18: This last financial year has just completed and the financial statements will be ready in October 2018. Novation can provide this to RMS at any time as requested.



NOVAT Acct Letter
RMS Tender.pdf

Returnable Schedule 7

Response to Proposed Contract

The Proposed Contract is that which is referred to in Part C of the RFP.

Roads and Maritime Services will use information provided in Proposals to populate relevant blanks or variables in the Proposed Contract.

Roads and Maritime Services and Roads and Maritime Services have a strong preference that the terms of the Proposed Contract are not amended and any amendments proposed by the Proponent may be taken into account by Roads and Maritime Services in evaluating the Proposal.

Further, proponents are reminded that where this RFP is issued under a Scheme the Scheme rules may prohibit all or certain amendments to the Proposed Contract.

If the Proponent wishes to amend the Proposed Contract then it must complete the table below in relation to the Proposed Contract (including all Schedules) and return in Microsoft Office format.

9.1 Proposed Changes					
Information Required:		Proponents shall provide details of any proposed changes to the Proposed Contract. Roads and Maritime Services reserves the right to accept, reject or negotiate any such proposed additional clauses in its sole discretion.			
Proponent Response					
No.	Ref	Topic	Proposed Change	Reason	Category ¹
N/A	N/A	N/A	N/A	N/A	N/A

¹ Category column - please categorize each requested amendment as follows:

- Category 1 – “Showstoppers” ie the Proponent will not sign the Contract without this amendment;
- Category 2 –Important amendments but not showstoppers

Returnable Schedule 8

Other parties

If the Proponent’s Proposal involves other parties, please provide the following information about the other parties:

Response	
Name of legal entity	N/A
Trading Name	N/A
ACN	N/A
ABN	N/A
Registered office address	N/A
Description of involvement of company in Proposal	N/A
Description of Proponent’s relationship with the company	N/A
Details of the company’s track record in performing the role envisaged in the Proposal	N/A
Details of a representative of Proponent who is authorised to represent and legally bind the entity: <ul style="list-style-type: none">NameTitleCurrent telephone numberFacsimile numberEmail address	N/A

If no other parties are involved, please state so.

no other local parties or subcontractors are involved. Novation Engineering provides end to end delivery for this tender.



Transport

Roads & Maritime Services

Goods and Services Agreement for supply of portable weigh scales for heavy vehicle enforcement

Dated August 30th, 2018

Roads and Maritime Services ("RMS")


Novation Engineering ("Supplier")

Contract Reference Number RMS2018-001

Parties	RMS and Supplier	
RMS	Name	Roads and Maritime Services
	ABN/ACN/ARBN	76 236 371 088
	Address	Level 9, 101 Miller Street, North Sydney, New South Wales, 2060
Supplier	Stephen Thammiah	
	ABN :	
	50608485409	
	ACN:	
	608485409	
	Address:	
<hr/>		
Date of agreement	11/9/2018	


EXECUTED as an agreement.

Signed by the authorised Delegate of **Roads and Maritime Services** in the presence of



Witness' signature
Samer Sourmar

Name



Delegate's Signature
11/9/2018

Date
Alex Lee

Name
Project Engineer

Position

EXECUTED by *Novation*
Engineering Pty Ltd in accordance
with section 127(1) of the Corporations
Act 2001 (Cwlth) by authority of its
directors:




.....
Signature of director

STEPHEN THAMMIAH

.....
Name of director (block letters)

30th August 2018

.....
Date



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

STEPHEN THAMMIAH

.....
Name of company secretary* (block
letters)

*delete whichever is not applicable

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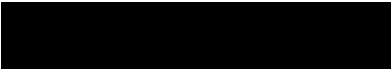

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Contract Details

Commencement Date (Clause 2)	<i>The date on the letter of acceptance</i>	
Initial Term (Clause 2)	<i>One year</i>	
Further Term (Clause 2)	<i>One year plus one year</i>	
Delivery Address (Clause 3.4)	<i>To be provided at contract execution</i>	
Warranty Period (Clauses 3.8 and 4.4)	<i>12 months</i>	
Repair Location (Clause 3.9)	<i>Sydney, New South Wales</i>	
Invoice Timing (Clause 7.2)	<i>When all goods have been delivered</i>	
Security (Clause 9.4)	<div>Criminal record search and investigation required? <div><input type="checkbox"/> Yes, for all Supplier Personnel involved in:<div><div><input type="checkbox"/> Manufacturing of the Goods</div><div><input type="checkbox"/> Packaging of the Goods</div><div><input type="checkbox"/> Delivery of the Goods</div><div><input type="checkbox"/> Planning of the Services</div><div><input type="checkbox"/> Performance of the Services</div><div><input type="checkbox"/> Other: _____ of the Goods</div><div><input type="checkbox"/> Other: _____ of the Services</div></div></div><div><input checked="" type="checkbox"/> No</div></div>	
	<div>Deed of Confidentiality required? <div><input type="checkbox"/> Yes, for all Supplier Personnel involved in:<div><div><input type="checkbox"/> Manufacturing of the Goods</div><div><input type="checkbox"/> Packaging of the Goods</div><div><input type="checkbox"/> Delivery of the Goods</div><div><input type="checkbox"/> Planning of the Services</div><div><input type="checkbox"/> Performance of the Services</div><div><input type="checkbox"/> Other: _____ of the Goods</div><div><input type="checkbox"/> Other: _____ of the Services</div></div></div><div><input checked="" type="checkbox"/> No</div></div>	

IP Ownership (clause 13.4)	Option A - RMS Owns New IP	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option B – Supplier Owns New IP but RMS has Exclusive Use Licence	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option C – Supplier Owns New IP but RMS has Non-Exclusive Use Licence	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

NOTE: Chose one option here and mark “no” for others. If no option is selected or if it is unclear which option is selected then Option A will apply

RMS Representative (Clause 15) and notices (Clause 24)	Name:	<u>Alex Lee</u>
	Position:	<u>Project Engineer</u>
	Address:	<u>110 George Street Parramatta NSW 2150</u>
	Facsimile:	<u>02 8848 8225</u>
	Email:	<u>Alex.lee@rms.nsw.gov.au</u>
Supplier Representative (Clause 15) notices (Clause 24)	Name:	<u>Stephen Thammiah</u>
	Position:	<u>Managing Director</u>
	Address:	
	Facsimile:	<u>0449 144 125</u>
	Email:	<u>novationengineering</u> 
Reports (Clause 15.3)	<i>Monthly update of PWS delivered in that month and PWS delivery planned for the next month</i>	
Review meetings (Clause 15.4)	<i>Monthly</i>	
Supplier Liability Cap (Schedule 1 & Clause 17.2)	<i>\$ 7 Million</i>	
Transition Plan Submission Date (Clause 26.1)	<i>1 month from the Commencement Date</i>	

**Insurance Policies
(Clause 18.1)**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products Liability	[\$10 million*] for any single occurrence and unlimited in the aggregate as to the number of occurrences The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed [\$10 million*]	<input checked="" type="checkbox"/>
Motor Vehicle Comprehensive or Third Party Property Damage	[\$20 million*] for any single occurrence and unlimited in the aggregate as to the number of occurrences	
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Personal Accident & Illness	Minimum of 104 weeks but only required if the Supplier is a sole trader	
Professional Indemnity	[\$1 million*] per occurrence	
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Supplier	[\$7 million*] for any single occurrence and at least [\$7million*] in the aggregate as to the number of occurrences A loss sub-limit of [\$7 million*] on any single occurrence of burglary or theft	<input checked="" type="checkbox"/>

For details of requirements for each policy see Attachment B.

**Important contractual notices
(Clause 24.2)****Important contractual notices under clause 24.2 must be copied to:**

1 If to RMS:

Copy to: The General Counsel

(for notices under clause 24.2 only) 101 Miller Street
North Sydney
New South Wales

2 If to the Supplier:

Copy to: Novation Engineering Pty Ltd

(for notices under clause 24.2 only)



Note: Under clause 24.2 important contractual notices are not permitted to be sent by facsimile or email.

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will supply Goods and perform Services;
- (b) the Contract Details - the details set out the key commercial variables applicable to this agreement;
- (c) the Schedules - set out the detailed provisions relating to the Goods, Services and Service Levels; and
- (d) the other Attachments - sets out forms and other material relevant to this agreement.

1.2 No exclusivity

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of the Goods or Services, or goods or services similar to the Goods or Services and RMS may at any time during the Term acquire such Goods or Services or any part of them from a third party; and
- (b) RMS is under no obligation to acquire any minimum quantity of Goods or Services under this agreement.

1.3 Priority

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

1.4 Definitions and interpretation

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

2 Term

2.1 Term of Agreement

This agreement commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause 2.2 (Extension) or terminated in accordance with this agreement.

2.2 Extension

RMS may extend this agreement on the same terms and conditions for the Further Term by notifying the Supplier at least 30 days prior to expiry of the Initial Term

2.3 Holding over

Following expiry of the Initial Term (including any extension of it under clause 2.2 (Extension)) if RMS Requires then this agreement will continue on a periodic basis on the same terms (including Charges) until the earlier of:

- (a) termination by either party giving the other at least 3 month's notice;
- (b) expiration of 12 months; or
- (c) termination in accordance with this agreement.

3 Goods

3.1 General

The Supplier must supply the Goods to RMS in accordance with the terms and conditions of this agreement.

3.2 Specifications

The Supplier must ensure that the Goods:

- (a) comply with the Specifications; and
- (b) are identical to any Tested Goods.

3.3 Packaging

The Supplier must ensure that all Goods:

- (a) are properly and securely packaged so as to reach the Delivery Address in a new and undamaged condition;
- (b) have documentation sent with the package or container (including delivery advice notes and packing lists) containing the Delivery Address, contact name and contact number of the relevant RMS contact; and
- (c) comply with any specific packaging and identification requirements that RMS may reasonably require from time to time.

3.4 Delivery

- (a) The Supplier must deliver the Goods and Documentation to the Delivery Address in accordance with the Delivery Timeframe and the Service Levels.
- (b) Before handing over the Goods and Documentation to RMS, the Supplier must:
 - (i) sight RMS staff identification tag;
 - (ii) obtain the signature; and
 - (iii) record the full name and staff number,

of the RMS Representative that takes receipt of the Goods and Documentation and keep such record for the Term (“**Proof of Delivery**”). If requested by RMS, the Supplier must provide to RMS the relevant Proof of Delivery. A Proof of Delivery will (in the absence of other contrary evidence) be deemed to be sufficient evidence that the Goods and Documentation have been delivered to RMS.

3.5 Assistance

- (a) The Supplier must provide RMS with all reasonable assistance (including installation and testing) to ensure the Goods are fully operational and comply with the Specifications.
- (b) RMS may inspect and test the Goods upon delivery for compliance with the Specifications.

3.6 Errors and Defects

If Goods delivered to RMS:

- (a) do not conform with this clause 3 (Goods); or
- (b) fail to comply with a representation or warranty specified in clause 16.2 (Representations and warranties in respect of Goods and Services),

then RMS, irrespective of whether it has paid for the Goods, may reject the Goods by giving written notice to the Supplier (“**Rejection Notice**”).

3.7 Rejection Notice

If a Rejection Notice is issued by RMS in respect of any Goods, in addition to any other rights RMS may have under this agreement or by law, the Supplier must, at RMS’s sole option:

- (a) immediately refund any moneys paid in advance for the Goods (if applicable); or
- (b) immediately replace the Goods at its cost.

3.8 Warranty repairs

If the Goods are or become defective in any way during the Warranty Period, then, at RMS's absolute discretion:

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

3.9 Facilities to repair

The Supplier agrees to ensure that facilities for the repair of the Goods are available at the Repair Location for the Warranty Period.

3.10 Stock Levels

The Supplier must ensure that throughout the Term it maintains sufficient stock levels of Goods to meet obligations under this agreement.

3.11 Title and risk

The parties acknowledge and agree that:

- (a) Goods becomes the property of RMS on delivery of the Goods to the Delivery Address;
- (b) the risk of loss or damage to the Goods passes to RMS on delivery of the Goods to the Delivery Address in accordance with this clause 3 (Goods); and
- (c) if any Goods are re-taken by the Supplier, the risk of loss or damage to the Goods passes back to the Supplier upon removal from RMS's premises.

4 Services**4.1 General**

The Supplier must provide the Services to RMS to a standard that meets or exceeds any applicable Services Levels in accordance with the terms and conditions of this agreement.

4.2 Incidental Services

The Supplier must provide (without additional charge) any incidental or related services not specifically described in Schedule 2 (Goods and Services) or this agreement which are required for the proper performance or use of the Services described in this agreement.

4.3 Capability Levels

The Supplier must ensure that throughout the Term it maintains sufficient capability and resources in relation to Services to meet its obligations under this agreement.

4.4 Warranty rectification

If the result achieved by the Services is or becomes defective in any way during the Warranty Period then the Supplier must immediately re-perform the Service or remedy the defect at the Supplier's cost.

5 Service Levels and Service Credits

Where the Supplier fails to meet any Service Level, without limiting other rights and remedies available to RMS, the Supplier must at no additional cost to RMS promptly:

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

6 Other Supplier Obligations

6.1 Standard of performance

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

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

6.2 Comply with requirements

Without limiting the Supplier's obligations under this agreement, the Supplier must comply, and must ensure that the Supplier Personnel comply, with:

- (a) all RMS standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this agreement);
- (b) all other reasonable requirements and directions of RMS in relation to the Goods and Services, including that the Supplier must reasonably co-operate with other RMS suppliers; and
- (c) the Supplier's own internal standards and policies (other than any which are inconsistent with this agreement).

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

6.3 SME Participation Plan and reporting

- (a) This clause only applies where the Supplier has submitted a SMEPP to RMS.
- (b) The Supplier acknowledges that RMS has relied on the SMEPP in awarding this agreement to the Supplier.
- (c) The Supplier must comply with the requirements and commitments provided for in the SMEPP and take all steps reasonably required to enable RMS to monitor compliance by the Supplier with the SMEPP.
- (d) The parties acknowledge and agree that:
 - (i) RMS may establish mechanisms to monitor compliance by the Supplier with its commitments under the SMEPP; and
 - (ii) non-compliance by the Supplier of the SMEPP commitments will entitle RMS to terminate in accordance with clause 22.1 (Termination by RMS for cause).
- (e) The Supplier acknowledges that RMS may take into consideration non-compliance by the Supplier with the SMEPP when evaluating tenders submitted by the Supplier to RMS in the future for other agreements.
- (f) In this clause "SMEPP" refers to a Small & Medium Enterprise Participation Plan under the NSW Government's Small and Medium Enterprises Policy .

7 Charges, invoices and payments

7.1 RMS will pay Charges

Subject to this clause 7 (Charges, invoices and payments), in consideration of the Supplier supplying the Goods and performing the Services, RMS will pay to the Supplier the Charges. The Supplier is not entitled to recover any charge or expenses additional to the Charges for the supply of Goods, the performance of the Services, the provision of any benefit or the performance

of any acts, even if required to do so under this agreement, unless the agreement provides otherwise.

7.2 Invoice Timing

The Supplier will issue and invoice for the Charges in accordance with the Invoice Timing or if there is no Invoice Timing established for the relevant Goods or Services, then:

- (a) in respect of Goods, on delivery of all Goods; and
- (b) in respect of Services, on completion of all Services,

unless otherwise agreed in writing by RMS.

7.3 Payment of amounts due to or in respect of employees

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

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

Without limiting any rights RMS may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to RMS as required by clause 7.7 (Amounts due to) at RMS's option.

7.4 Payment of invoices

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

7.5 Correctly rendered invoice

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

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment in accordance with clause 7.2 (Invoice Timing);
- (c) the amount claimed in the invoice is correctly calculated under this agreement;

- (d) the invoice includes the relevant RMS purchase order number, cost centre number and general ledger code and is set out in a manner that identifies the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to RMS acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to RMS the Goods supplied, the Services that were performed and the basis on which the amounts are claimed;
- (f) the invoice is addressed to “Roads and Maritime Services” with attention to the RMS Representative and identifies this agreement; and
- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice relates.

7.6 Disputed invoices

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

7.7 Amounts due to RMS

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

7.8 Set off rights

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

7.9 Payment does not affect other rights or obligations

Payment of money under clause 7.1 (RMS will pay Charges) is not evidence:

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

8 Taxes and GST

8.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the Supplier arising from or relating to this agreement, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by RMS.

8.2 Evidence of payment

Where the Supplier pays Taxes imposed on RMS under clause 8.1 (Taxes), the Supplier must provide to RMS within 3 Business Days of payment a written notification evidencing, to the satisfaction of RMS, the full and timely payment of the relevant Taxes.

8.3 Indemnity

The Supplier indemnifies RMS against any costs or expenses that RMS suffers or incurs as a result of the Supplier failing to meet its obligations under clause 8.1 (Taxes).

8.4 GST

The parties agree that:

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

8.5 Withholding tax

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

- (a) RMS agrees to deduct the amount for the Taxes; and

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

9 Supplier Personnel

9.1 Supplier Personnel

The Supplier must ensure that the Supplier Personnel are suitably qualified, experienced and competent for their role in providing the Goods and Services.

9.2 Removal of Supplier Personnel

Where required by RMS, the Supplier must remove and replace any particular Supplier Personnel as reasonably request by RMS.

9.3 Information about Supplier Personnel

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

- (a) a list of any of the Supplier Personnel; and
- (b) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel.

9.4 Security

If specified in the Contract Details, the Supplier must, and must ensure that the relevant Supplier Personnel:

- (a) submit to security checks; and
- (b) execute a deed of confidentiality in the form reasonably required by RMS.

9.5 Criminal record search and investigation

If required by clause 9.4 (Security), in relation to all relevant Supplier Personnel (as specified in the Contract Details):

- (a) prior to, but no earlier than 3 weeks before the Supplier engages that person to perform work in connection with this agreement, the Supplier must:
 - (i) for Supplier Personnel who are resident in Australia, perform or procure a national criminal record search of that person from the Criminal Records Section of the NSW Police Force (or such other branch or office of the NSW Police Force or law enforcement agency performing the functions of the Criminal Records Section from time to time) and must provide the results to RMS;
 - (ii) for Supplier Personnel who are resident outside Australia, use reasonable endeavours to perform or procure a criminal

record search of that person from the relevant police force of the jurisdiction where the Supplier Personnel resides and must provide the results to RMS;

- (b) RMS may, but is not required to, carry out the search referred to in clause 9.5(a) itself;
- (c) the Supplier must conduct such other investigations at the Supplier's expense as RMS may reasonably request and must provide the results of those investigations to RMS; and
- (d) RMS may conduct such other investigations at RMS's expense as RMS considers appropriate and the Supplier must provide all such assistance as RMS may reasonably request.

The Supplier acknowledges that any search or investigation by RMS in accordance with this clause 9.5 (Criminal record search and investigation) will not affect the Supplier's obligations under this agreement.

9.6 Consent from Supplier Personnel

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

- (a) the Supplier and RMS to conduct the searches or investigations under and within the timeframes specified in clause 9.5 (Criminal record search and investigation); and
- (b) the Supplier to provide the results of its searches or investigations to RMS in accordance with clause 9.5 (Criminal record search and investigation).

9.7 Inability to obtain consent

If the Supplier is unable to obtain a consent required under clause 9.6 (Consent from Supplier Personnel) from a person, then, unless RMS agrees otherwise in writing, the Supplier must not allow that person to perform work in connection with this agreement and the Supplier must provide a replacement for that person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

9.8 No access where there has been a Relevant Offence

The Supplier must not allow a member of the Supplier Personnel to perform work in connection with this agreement without the written consent of RMS if:

- (a) a search conducted under clause 9.5 (Criminal record search and investigation) shows that the person has been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or

- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

9.9 Supplier becomes aware of information

If, after the Supplier has allowed a person to perform work in connection with the agreement, the Supplier becomes aware of information of the type referred to in clause 9.8 (No access where there has been a Relevant Offence), then the Supplier must immediately notify RMS and the Supplier must take such reasonable action as RMS requests in relation to the person including, without limitation, replacing that person with a person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

9.10 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under clause 9.5 (Criminal record search and investigation) or any breach of the security or privacy obligations contained this agreement, RMS is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this agreement, then RMS may request the Supplier to remove that person from the performance of this agreement. If RMS makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to RMS within a reasonable time of RMS's request and without inconvenience or cost to RMS.

9.11 Certification

Within 5 Business Days of each anniversary of the Commencement Date or otherwise on request by RMS, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel).

9.12 Obligations subject to law

Neither party is required to comply with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel) to the extent that compliance would result in a contravention of any legal requirement with which the party is required to comply.

9.13 No poaching

From the Commencement Date until 12 months after expiry of the Term, neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under this agreement. Nothing in this clause prevents RMS from employing or contracting any person through a publicly advertised recruitment or procurement process.

10 Business continuity and disaster recovery

10.1 Develop plan

Within 2 months from the Commencement Date, the Supplier must develop a draft Business Continuity Plan and provide it to RMS for review. The draft Business Continuity Plan must detail how the Supplier would continue to supply the Goods and Services to RMS if a Disaster Recovery Event occurs. The Supplier must ensure that the draft Business Continuity Plan:

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

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

10.2 Update plan

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

10.3 Test plan

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

10.4 Disaster Recovery Event

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

11 Sub-contracting

11.1 Subcontracting

The Supplier must not sub-contract any of its obligations under this agreement without the prior written approval of RMS. RMS may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

11.2 Responsibility for Subcontractors

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies RMS against all costs, expenses liabilities incurred by RMS in connection with the acts or omissions of any Subcontractors.

12 Change control

12.1 Change request

Either party may request a change to:

- (a) the scope or description of any Goods or Services; or
- (b) the requirements of Schedule 2 (Goods and Services);

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

12.2 Change request by RMS

If a Change is requested by RMS, the Supplier must provide to RMS within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 12.5 (Requirements for Change Proposal).

12.3 Change request by Supplier

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

12.4 Assistance from RMS

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

12.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and
- (b) specify all changes to the relevant Charges, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Charges must be based on the Supplier’s actual direct costs as a result of the Change, including a reasonable profit allowance.

12.6 Acceptance or rejection of a Change Proposal

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

13 Intellectual Property Rights

13.1 Existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the date of this agreement will be retained by the relevant party.

13.2 Licence for RMS to Use Existing Supplier IP

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

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under (a) to any person, but only in relation to the use or benefits of the Goods or Services.

13.3 Licence for Supplier to Use Existing RMS IP

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

13.4 New Intellectual Property Rights

The Contract Details determine whether Option 1, 2 or 3 applies.

(a) Option 1 – RMS Owns New IP

The Supplier assigns or will procure the assignment to RMS, on creation:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services.

(b) Option 2 – Exclusive Licence to RMS to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants RMS an exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of RMS;
- (iv) permit any person to assist the RMS to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) to any person.

(c) Option 2 – Non-exclusive Licence to RMS to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

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

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of RMS;
- (iv) permit any person to assist the RMS to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

13.5 Confidentiality

Nothing in clause 13.2 (Licence for RMS to Use Existing Supplier IP) and 13.3 (Licence for Supplier to Use Existing RMS IP) removes or limits the obligations of confidentiality under clause 14 (Confidentiality and privacy).

13.6 Know-how use

Subject to clause 14 (Confidentiality and privacy) and clause 13.1 (Existing Intellectual Property Rights), each of RMS, the Supplier and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Goods, Services or this agreement.

13.7 Indemnity

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

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

13.8 Other remedies

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

- (a) promptly procure for RMS the right to use the Goods or the results of the Services (as applicable) on reasonable commercial terms as contemplated under this agreement free of any claim or liability for infringement;
- (b) promptly procure for RMS replacement goods or materials which comply with the relevant Specifications; or
- (c) promptly modify the Goods or materials so that they cease to infringe those rights (while still complying with the applicable Specifications).

14 Confidentiality and privacy

14.1 Disclosure of Confidential Information

A party who receives Confidential Information ("**Recipient**") must not disclose the Confidential Information supplied by the other party ("**Discloser**") to any person except:

- (a) its Representatives who require the Confidential Information for the purposes of this agreement; or
- (b) to enable the Recipient to obtain professional advice in relation to this agreement; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or

- (e) if the Recipient is required to do so in connection with legal proceedings relating to this agreement or other agreement between the parties.

14.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 14.1(a) or 14.1(c) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 14.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

14.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this agreement or any other agreement between the parties.

14.4 Return of Confidential Information

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

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

14.5 No disclosure of the terms of this agreement

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

14.6 Access to Information

- (a) This 14.6 only applies to the extent that the Supplier is required to provide goods or services to the public on behalf of RMS.
- (b) Within 3 days of receiving a written request by RMS the Supplier must provide RMS with immediate access to information referred to in s. 121(1) of *Government Information (Public Access) Act 2009 (NSW)* (but excluding information referred to in s.121(2) of *Government Information (Public Access) Act 2009 (NSW)*) contained in records held by the Supplier at the Supplier's expense and in such medium as RMS may reasonably require. This is an essential term of this agreement.
- (c) RMS will consult with the Supplier before releasing any information obtained from the Supplier where required under s.54 of *Government Information (Public Access) Act 2009 (NSW)*.

14.7 Disclosure of details of RMS contracts with the private sector

- (a) The Supplier acknowledges that RMS may be required to publish certain information concerning this agreement in accordance with ss 27 – 35 of *Government Information (Public Access) Act 2009 (NSW)*.
- (b) If the Supplier reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise RMS in writing, identifying the provisions and providing reasons so that RMS may consider seeking to exempt those provisions from publication.

14.8 Publicity

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

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

14.9 Compliance with privacy requirements

The Supplier must:

- (a) comply with RMS's privacy policy (and each specific privacy policy of RMS in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by RMS or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;

- (b) comply with the *Privacy Act 1988* (Cwlth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by RMS:
 - (i) relating to the means by which RMS complies with the *Privacy and Personal Information Protection Act 1998* (NSW), RMS's privacy policy, and all other applicable laws, codes and privacy policies; and
 - (ii) co-operate with RMS in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

14.10 Provide information

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

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

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

15 Representatives, reporting and audits

15.1 Responsibilities

The RMS Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of this agreement, including ensuring the performance by the parties of their respective roles and responsibilities.

15.2 Delegation by Representatives

The RMS Representative and the Supplier Representative may delegate part of their operational responsibilities to other Representatives in order to operate more efficiently and effectively.

15.3 Reports

The Supplier must provide to RMS the reports with the content and in the frequency and form (electronic or physical) set out in the Contract Details.

15.4 Review meetings

The Supplier Representative must attend meetings with the RMS Representative at a place and time to be notified to the Supplier by RMS on the frequency set out in the Contract Details to:

- (a) review the performance of the Supplier in relation to this agreement and the Charges incurred by RMS up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults;
- (b) discuss any other issues in relation to the Goods, the Services or this agreement.

15.5 Records and inspection

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by RMS, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit RMS to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with this agreement; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

15.6 Annual audit

Each year, on dates nominated by RMS, RMS may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this agreement.

15.7 Costs of audit

The auditors' costs incurred by RMS in the audit under clause 15.6 (Annual audit) will be paid by RMS. However, where the auditor objectively determines that the performance by the Supplier falls below the Service Levels or identifies breaches of this agreement by the Supplier, all the costs of RMS (including third party auditor fees) in respect of that audit will be paid by the Supplier.

15.8 Costs

Unless expressly provided otherwise in this clause 15 (Representatives, reporting and audits), RMS and the Supplier will each pay their own costs

and expenses in connection with this clause 15 (Representatives, reporting and audits).

16 Warranties and representations

16.1 Supplier's general representations and warranties

The Supplier represents and warrants on the date of this agreement and at all time during the Term, that:

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

16.2 Representations and warranties in respect of Goods and Services

The Supplier represents and warrants that:

- (a) the Goods:
 - (i) will meet the Specifications and all other applicable requirements under this agreement;
 - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;
 - (iii) upon title passing to RMS, will be unused and free from any charge or encumbrance; and
 - (iv) will comply with all laws that are related in any way to the Goods;
- (b) the Services:
 - (i) will be performed with due care and skill and in accordance with industry best practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will be used with materials that are:
 - (A) fit for the purpose for which they are supplied and used; and

- (B) will comply with any applicable specifications or requirements;
- (c) the Supplier and the Supplier Personnel will not infringe the Intellectual Property rights or Moral Rights of any person in providing the Services or otherwise performing this agreement;
- (d) the Goods or Services and their use will not:
 - (i) result in a breach of any law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information; or
 - (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

16.3 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 16 (Warranties and representations), the Supplier must give written notice to RMS detailing that matter and its likely impact on the Supplier's ability to comply with this clause 16 (Warranties and representations).

17 Liability & Indemnity

17.1 RMS's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of RMS to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to an amount equal to the aggregate of the Charges paid or payable under this agreement; and
- (b) RMS will not be liable to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.2 Supplier's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of the Supplier to RMS under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the aggregate of the Supplier Liability Cap; and

- (b) the Supplier will not be liable to RMS under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.3 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 14 (Confidentiality and privacy);
- (d) the Supplier's liability under clause 13 (Intellectual Property Rights);
- (e) liability of either party for unlawful or illegal acts or conduct; or
- (f) RMS's liability to pay such of the Charges as are due and payable.

17.4 Consequential Loss Definition

- (a) Subject to clause 17.4(b) Consequential Loss:
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Goods or Services;
 - (iv) cost of repairing Goods;
 - (v) legal fees on a full indemnity basis.

17.5 Civil Liability Act

The parties agree that:

- (a) all rights, obligations and liabilities under or in connection with this agreement are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of

the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities; and

- (b) this clause applies even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)).

17.6 Indemnity

- (a) The Supplier is liable for, and indemnifies RMS against, all liability or loss arising out of or in connection with the breach of this agreement by the Supplier or its personnel or the negligence or default of the Supplier or its personnel except to the extent the liability or loss is contributed to by RMS's negligence or breach.

18 Insurance

18.1 Insurance

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

18.2 Evidence of insurance

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

18.3 Supplier notification

The Supplier must notify RMS within two Business Days of any event which affects or may affect the Supplier's compliance with this clause 18 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

18.4 Notification of relevant insurance claims

Within 5 Business Days of the Supplier becoming aware of any claims against any of its insurances in connection with the Goods or Services or which may impact upon the provision of the Goods or Services, it must:

- (a) notify RMS in writing of the claim; and
- (b) give RMS any further information regarding the claim as RMS may require.

19 Disputes

19.1 Reasonable endeavours to settle

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

19.2 Dispute notice

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

19.3 Negotiation

If a Dispute is notified under clause 19.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 19.2 (Dispute notice).

19.4 Alternative dispute resolution

If the Dispute is not resolved within the period referred to in clause 19.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

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

19.5 Further resolution process

If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 19.4 (Alternative dispute resolution) or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing on a particular process, then:

- (a) if the amount of the Dispute is less than \$100,000, either party may refer the Dispute to expert determination in accordance with clause 19.6 (Expert determination) unless RMS has notified the Supplier that in its reasonable opinion, the Dispute is not appropriate for resolution by expert determination; or

- (b) if the amount of the Dispute is \$100,000 or more or RMS has notified the Supplier that in its reasonable opinion, the Dispute is not suitable for expert determination, then either party will be free to commence court proceedings relating to the Dispute.

19.6 Expert determination

If either party refers the dispute to expert determination pursuant to clause 19.5(a), the expert determination is to be carried out as follows:

- (a) Within 5 Business Days after the date of the notice under clause 19.5(a), the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference.
- (b) A person that appears on both lists under clause 19.6(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 19.5(a) will be appointed.
- (c) If no person appears on both lists, the parties must request the President of the NSW Chapter of the Institute of Arbitrators and Mediators of Australia to nominate a person to act as the expert.
- (d) RMS and the Supplier must enter into an agreement with the expert on such reasonable terms as the expert may require provided that the expert must be instructed that the expert:
 - (i) is to act as an expert and not as an arbitrator;
 - (ii) is to proceed in the way, and determine the rules for the conduct of the expert determination, as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) is to take into consideration those documents and that information and other material which the parties give to the expert and which in the expert's opinion are relevant to the determination of the dispute;
 - (iv) need not, but may obtain or refer to any other documents, information or material;
 - (v) must determine the dispute and give written reasons for the decision within one month after being appointed; and
 - (vi) must determine what proportion of the costs of the expert determination is to be paid by each party.
- (e) The determination of the expert must be given to the parties in writing and will be final and binding upon the parties.
- (f) The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert unless the expert determines otherwise.

19.7 Right to terminate

This clause 19 (Disputes) does not affect either party's rights to terminate this agreement under clause 22 (Termination) or pursuant to any other rights of termination contained in this agreement.

19.8 Interlocutory relief

This clause 19 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

19.9 Parties to continue to perform

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

20 Conflict of Interest & Probity**20.1 Definition**

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

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

20.2 Probity Events

- (a) **(Probity Event Notice by Service Provider)** The Supplier must give notice to RMS as soon as it becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (b) **(Probity Event Notice by RMS)** RMS may give notice to the Supplier if RMS becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).

- (c) **(Content of Notice)** The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.
- (d) **(Probity Investigations)** Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from RMS for access to its personnel for the purpose of undertaking any investigations that RMS may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that its personnel (and where relevant any Related Body Corporate and its personnel) co-operate with RMS and comply with any reasonable requests for information that RMS may make in the course of its investigations.
- (e) **(Remedial Action)** Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by RMS to discuss the occurrence of the Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to reverse the effect of the Probity Event.
- (f) **(RMS May Direct Remedial Action)** If the parties are unable to agree within 5 Business Days of such meeting (or any longer period RMS may agree) RMS may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

21 Force Majeure

21.1 Notice of a Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:

- (a) sets out details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

21.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

22 Termination

22.1 Termination by RMS for cause

RMS may terminate this agreement in full or in part immediately by notice to the Supplier if:

- (a) **Breach of agreement** - the Supplier breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as RMS states, of receiving notice from RMS requiring the breach to be remedied;
- (b) **Recurring Breach** - the Supplier:
 - (i) breaches this agreement on three (3) separate occasions within a three (3) month period; and
 - (ii) has been issued with a notice from RMS stating that any further breach of this agreement will give RMS the right under this clause 22.1(b) to terminate this agreement; and
 - (iii) commits a further breach of any provision of this agreement.
- (c) **Insolvency** - the Supplier becomes Insolvent;
- (d) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this agreement;
- (e) **Change of Control** - the Supplier undergoes a Change of Control
- (f) **Probity Event** – a Probity Event has not been remedied to RMS's satisfaction.

22.2 Termination by Supplier for cause

The Supplier may only terminate this agreement if RMS has failed to pay an amount due to the Supplier under this agreement which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 22.2 (Termination by Supplier for cause) if payment is not made.

22.3 Termination by RMS for convenience

RMS may terminate this agreement in full or in part by giving not less than 60 days' written notice to the Supplier provided that RMS must pay the amounts required under clause 23.2 (Early termination charges).

22.4 Force Majeure

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

22.5 Continuation

Where RMS exercises its rights under this clause 22 (Termination) only in relation to one or more, Goods or Services, the Supplier must continue to perform this agreement in respect of any other, Goods or Services which have not been terminated.

23 Events following termination or expiry**23.1 Obligations on expiry or termination**

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

- (a) any fees paid by RMS to the Supplier in advance for Goods and Services not yet supplied under this agreement; and
- (b) any Service Credits accrued up to the date of termination.

23.2 Early termination charges

If RMS terminate this agreement for convenience pursuant to clause 22.3 (Termination by RMS for convenience), then if the Supplier is able to demonstrate to RMS's reasonable satisfaction that prior to receiving notice of termination:

- (a) the Supplier has irrevocably acquired or committed with a third party to acquire Goods for the purposes of fulfilling this agreement, then RMS must either (at RMS's election):
 - (i) acquire those Goods from the Supplier for the applicable Charges; or
 - (ii) reimburse the Supplier for the Supplier's out of pocket costs for those Goods less the proceeds which the Supplier receives on sale of those Goods (having taken all reasonable steps to sell the goods and to maximise the price received); and
- (b) the Supplier has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services under this agreement and the Supplier has not at the time of termination become

entitled to charge for those Services, then RMS must reimburse the Supplier for those costs which the Supplier incurs.

The Supplier must take all reasonable steps to mitigate the costs referred to in this clause 23.2 and RMS will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The Supplier must provide RMS with evidence reasonably satisfactory to RMS to substantiate any claim under this clause 23.2.

23.3 Survival

Clauses 7 (Charges, invoices and payments), 8 (Taxes and GST), 9.13 (No poaching), 13 (Intellectual Property Rights), 14 (Confidentiality and privacy), 17 (Liability), 18 (Insurance), 19 (Disputes), and 27 (General) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

24 Notices

24.1 Form

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

24.2 Important contractual notices

A notice under clause 12 (Change control), clause 19 (Disputes), clause 22.1 (Termination by RMS for cause), clause 22.4 (Force Majeure) or clause 25.1 (Assignment or novation by) or any other notice claiming or relating to a breach, repudiation, purported termination or variation of this agreement must be:

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

24.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 24.2 (Important contractual notices) must be:

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

- (d) sent by email to the email address specified in the Contract Details or as notified by the receiving party.

24.4 Time of receipt

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

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

25 Assignment, Novation & Piggybacking

25.1 Assignment or novation by RMS

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

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

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 25.1 (Assignment or novation by).

25.2 Assignment or novation by the Supplier

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

25.3 Piggybacking by other NSW Agencies

If a public sector service agency (as defined in the *Public Works and Procurement Act 1912*) requests the Supplier to provide services to it similar to the Services then the Supplier agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms of this agreement having regard to any necessary changes.

26 Transition Out & Unwind Services

26.1 Transition Plan

- (a) In the event of termination for any reason (inclusion expiration by time) the parties acknowledge that it is critical that there is an orderly and well managed transition out of the arrangements established under this Agreement. To facilitate a successful transition out the parties agree that it is important that the Provider prepare and regularly review and update a Transition Plan. As a minimum the Transition Plan must deal with the relationships, responsibilities and obligations of the parties to facilitate a smooth and orderly transition of the supply of the Goods and Services to a new provider and set out the systems, procedures and processes to allow for the orderly hand-over and transition.
- (b) The Supplier must:
 - (i) provide a draft initial Transition Plan to RMS on or before the Transition Plan Submission Date referred to in the Contract Details;
 - (ii) regularly review the Transition Plan and propose a new Transition Plan to RMS whenever any change in circumstances make it reasonable or advisable to do so; and
 - (iii) review and prepare a new Transition Plan whenever RMS requests (provided RMS shall not make such request more than once in any 12 month period).
- (c) The Supplier must consult RMS in the preparation of the Transition Plan and must submit the Transition Plan in draft to RMS for RMS's approval and make such amendments as RMS may reasonably require..
- (d) If RMS and the Supplier cannot agree on a Transition Plan at any time the RMS may prepare a Transition Plan which includes the obligations set out in this clause and details of any other assistance that it may require on termination or expiry of this Agreement.

26.2 Transition Out Services - Compliance with Transition Plan

The Supplier will provide the assistance as out services as set out in the Transition Plan and any other assistance as is necessary for an effective transition.

26.3 Transition Out Services – No Charges

The Supplier will provide the transition out services at no charge to RMS.

26.4 Unwind Services

- (a) At any time RMS may issue a Change request under clause 12 requesting the Supplier to provide Unwind Services for a period expiring no later than 6 months after the end of the Term, including any extension or holding-over (“the Unwind Period”).
- (b) Unwind Services are such services as RMS requests to achieve an orderly and staged transition of Services without interruption, from the Supplier to RMS or one or more parties nominated by RMS and include:
 - (i) the provision of all information and assistance as is reasonably necessary to assist RMS or another party to provide the Services or services like the Services to RMS or at RMS’s direction;
 - (ii) the provision of access to the Resources and personnel necessary for an effective transition, including resources required by RMS to perform the Services or services like the Services under this Agreement; and
 - (iii) such other assistance as may reasonably be requested by RMS.
- (c) If required by RMS the Supplier must, by the end of the Unwind Period or such earlier date as RMS may specify, cause a novation to RMS or one or more parties nominated by RMS, of the Supplier’s rights and obligations under any or all of its Third Party Agreements, as are necessary for the provision of the Services, on the terms specified by RMS.

26.5 Identification of Resources

If RMS so requests at any time, the Supplier must provide RMS with a list of Resources and Third Party Agreements necessary for the provision of the Services after the Term and such other information concerning such Resources and Third Party Agreements as RMS reasonably requires.

26.6 Non-derogation

- (a) The Supplier must carry on its business, and manage its Resources and Third Party Agreements consistently with and in the expectation that RMS will exercise its rights under this clause.
- (b) The Supplier must ensure that all Third Party Agreements are capable of being transferred, assigned or novated to RMS without payment of any transfer or termination fees, and that the relevant Third Party will consent to such transfer, assignment or novation.

- (c) The Supplier must not enter into any agreements, arrangements or understandings which contain obligations the purpose, or one of the purposes, of which is to avoid the Supplier’s obligations under this clause.

26.7 Definitions

Resources	includes facilities, infrastructure, systems, equipment, software, procedures, processes and other resources, but excludes personnel;
Third Party Agreements	means all agreements that the Supplier enters into with a third party relating to the provision of services or Resources which are used by the Supplier solely to provide the Services under this Agreement.

27 General

27.1 Discretion in exercising rights

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

27.2 Partial exercising of rights

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

27.3 No liability for loss

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

27.4 Remedies cumulative

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

27.5 Variation and waiver

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

27.6 Indemnities

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

27.7 Construction

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

27.8 Costs

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

27.9 Counterparts

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

27.10 Governing law and jurisdiction

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

27.11 Severability

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

27.12 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this agreement, including execution and delivery of documents and other instruments.

27.13 Entire agreement

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

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Amount of the Consideration means:

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

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

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

Change is defined in clause 12.1 (Change request).

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

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

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

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

Charges means the charges set out in Schedule 3 (Charges).

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

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

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

Consequential Loss has the meaning given in clause 17.4 (Consequential Loss Definition).

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

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

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

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

Controller has the meaning it has in the Corporations Act.

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

Delivery Address means the address specified in the Contract Details as the Delivery Address.

Delivery Timeframe means the timeframe for delivery of the Goods set out in Schedule 2 (Goods and Services).

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

Discloser is defined in clause 14.1 (Disclosure of Confidential Information).

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

Documentation means the documentation set out in Schedule 2 (Goods and Services) and all other documentation which, in RMS's reasonable opinion, is necessary to enable RMS to make full and proper use of the Goods.

Early Termination Fee means the fee calculated in accordance with the Contract Details.

Excluded Information means Information which:

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

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

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

Further Term means the period identified in the Contract Details as the Further Term.

General Terms means the general terms set out in clauses 1 to 27 of this agreement, including the schedules.

Goods means all goods set out in Schedule 2 (Goods and Services).

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

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

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

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

Initial Term means the period identified in the Contract Details as the Initial Term.

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

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

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 16.2(c) or 16.2(d).

A person is **Insolvent** if:

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

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

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

Invoice Timing means the timing for issue of invoices set out in the Contract Details.

Moral Rights means any moral rights including the rights described in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any statute (including the *Copyright Act 1968 (Cwth)* or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Probity Event has the meaning given to it by clause 20 (Conflict of Interest & Probity).

Proof of Delivery has the meaning given to it by clause 3.4 (Delivery).

Receiver includes a receiver or receiver and manager.

Recipient is defined in clause 14.1 (Disclosure of Confidential Information).

Records means records and documentation relating to this agreement (including Goods, Services, Service Levels, Service Credits and/or Charges).

Rejection Notice means a notice in accordance with clause 3.6 (Errors and Defects).

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

Relevant Offence means any offence which:

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

Repair Location means the location set out in the Contract Details as the Repair Location.

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

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

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

but excludes the Excluded Information.

RMS IP means Intellectual Property Rights owned by or licensed to RMS and made available to the Supplier or a Subcontractor for the purposes of the performance by the Supplier of its obligations under this agreement.

RMS Representative means the person identified the Contract Details as the RMS Representative, as varied by notice to the Supplier from time to time.

Service Credits means an amount calculated in accordance with Schedule 4 (Service Levels) in respect of the failure by the Supplier to meet one or more Service Levels in accordance with that Schedule.

Service Levels means the minimum performance levels set out in Schedule 4 (Service Levels).

Services means the services set out in Schedule 2 (Goods and Services) and all other services required to be provided by the Supplier under this agreement.

Small and Medium Enterprises Policy means the NSW Government's procurement policy from time to time concerning Small and Medium Enterprises.

Specifications means the specification for the Goods sets out in or annexed to Schedule 2 (Goods and Services).

Subcontractor means subcontractors of the Supplier

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

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

but excludes the Excluded Information.

Supplier IP means Intellectual Property Rights owned by or licensed to the Supplier or a Subcontractor for the provision of Goods and Services to RMS

Supplier Liability Cap means the Supplier liability cap set out in the Contract Details.

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

Supplier Representative mean the person identified in the Contract Details as the Supplier Representative, as varied by notice to RMS from time to time.

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

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

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

Tested Goods means the model or sample of goods which was provided to RMS for testing purpose as a representation of the Goods, if any.

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

Warranty Period means the periods set out in the Contract Details.

1.2 References to certain general terms

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

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures, schedules and attachments)** a clause, Schedule, Annexure or Attachment is a reference to a clause in, or a Schedule, Annexure or Attachment to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

1.3 Headings

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

Schedule 2 - Goods and Services

2.1 Description of Goods and/or Services

Refer to Request for Proposals Part B

2.2 Specifications

Refer to Request for Proposals Part B

2.3 Timetable

Refer to Request for Proposals Part B

Schedule 3 - Charges

Refer to Request for Proposal Returnable Schedule 7

Schedule 4 - Service Levels

Refer to Request for Proposals Part B

Attachment A - Contractor Statement Template

NOTE: this form is available online at

<http://www.rta.nsw.gov.au/publicationsstatisticsforms/downloads/45062893.pdf>

Contractor Statement

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



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

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



Details

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

Statement Validity Period

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

Declaration

Tick one in each row

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

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

Signature of Authorised Person

Name of Signatory (print)

Date

Position / Job Title of Signatory (print - see Note 4)

(see Notes on page 2)



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

Notes

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

Generic Version of Statement

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

Record Retention

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

Offences for False Statement

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

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rppt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

NOTE: this form is available online at
<http://www.rta.nsw.gov.au/publicationsstatisticsforms/downloads/45062893.pdf>

Attachment B - Insurance Policy Requirements

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
Broadform Public Liability and Product Liability	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c) lists RMS as an additional named insured; and (d) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below.	Required if selected in the Contract Details
Motor Vehicle Comprehensive or Third Party Property Damage	Annually for the duration of the contract.	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Services; and (c) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;.	Required if selected in the Contract Details
Professional Indemnity	From time contract is awarded to completion of the contract plus 6 years following completion of the contract The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of the contract	(a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) a description of the risk covered by the policy; (c) one automatic restatement per period of insurance; and (d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	Required if selected in the Contract Details
Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care,	Annually for the duration of the contract	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; and (c) lists the Service Provider and all subcontractors for their respective rights, interests and liabilities as named insureds.	Required if selected in the Contract Details

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
custody and control of the Service Provider.			
Personal Accident & Illness	Minimum of 104 weeks		Required if selected in the Contract Details
Definitions & Notes			
1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p> <p>Note that where the insurance risk is insured by a insurer not listed in Note 1 (a) or 1 (b) then a ‘fronting’ placement is acceptable from an insurer listed in Note 1 (a) or 1 (b).</p>		
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.		
3	A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy		
4	References in this Insurance Schedule to the “contractor” and the “contract” are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg “Service Provider” and “Agreement” or as the case may be).		



Transport
Roads & Maritime
Services

11/09/2018

NOVATION ENGINEERING PTY LTD

Attention: Stephen Thammiah

Re: Supply of portable weigh scales for heavy vehicle enforcement

RFP number: RMS 2018/001

CONDITIONAL LETTER OF ACCEPTANCE

Dear Stephen,

I am pleased to advise that your Company's Proposal of 30/08/2018 is accepted by Roads and Maritime Services ("Roads & Maritime"), subject to the following conditions:

1. **Outstanding Issues:** You provide your final delivery program which all products need to be delivered by 30 June 2019.
2. **Commencement:** RMS will not engage in any work until you have satisfied all the conditions specified in this letter, to acknowledge acceptance of the conditions please sign and date in the space provided below and return by email to the RMS Representative.
3. **Insurances:** You provide evidence of the insurances required by us under the contract.
4. **Media Releases:** Please liaise with us before issuing any Media Release or other public statement.
5. **Contact Documents:** The following documents will comprise the binding agreement between the parties:
 - the Goods and Services Agreement for supply of portable weigh scales for heavy vehicle enforcement;
 - this Letter of Acceptance;
 - your Proposal dated 30/08/2018;
 - the RFP (RMS 2018/001)

The RMS Representative under this contract is Mr Alex Lee, Project Engineer, Heavy Vehicle Programs. Email: alex.lee@rms.nsw.gov.au, Phone: 02 8848 8225

Yours faithfully

Samer Soliman
Manager, Heavy Vehicle Programs
Compliance

Name Stephen Thammiah
Sign/Date 12/09/18
for Novation Engineering Pty Ltd

Roads and Maritime Services

110 George Street, Parramatta NSW 2150

www.rms.nsw.gov.au | 13 17 82