



Transport  
**Roads & Maritime  
Services**

**ACCREDITATION AGREEMENT  
FOR THE  
OVERSIZE AND/OR OVERMASS ESCORT VEHICLE  
DRIVERS SCHEME**

**PROVIDER'S NAME:** \_\_\_\_\_

\_\_\_\_\_

**DATE SIGNED:** \_\_\_\_\_

**Version 2.0** 01 November 2017

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This agreement is between:

**Roads and Maritime Services** ABN 76 236 371 088, a New South Wales Government agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of 20 Ennis Road Milsons Point 2061, New South Wales (RMS)

and

**Provider** (as named in the Agreement Details)

## **PART 1**

### **Background**

- A. Under the Heavy Vehicle National Law, heavy vehicles that exceed specified dimension and mass limits may only operate on NSW roads under the authority of an exemption notice or permit. The permit may require the movement of an Oversize and/ or Overmass (OSOM) Vehicle to be accompanied by an Escort Vehicle which is driven by a police officer or another person authorised to direct traffic under an Australian road law.
- B. The OSOM Escort Vehicle Driver Scheme (EVDS) is a scheme under which Roads and Maritime:
  - i) will accredit providers to provide Escort Vehicle Services for OSOM Movements using Authorised Escort Vehicle Drivers; and
  - ii) appoint persons as authorised officers for the purpose of directing traffic under rule 304 of the *Road Rules 2014* (NSW) while the person is escorting an OSOM vehicle.
- D. Provider has applied to Roads and Maritime to be accredited to provide Escort Vehicle Services within the OSOM EVDS.
- E. Roads and Maritime agrees to accredit the Provider to provide Escort Vehicle Services within the OSOM EVDS, in accordance with this agreement.
- F. This agreement sets out the obligations of the Provider in connection with its accreditation and maintenance of its accreditation including the standards to which it must perform Escort Vehicle Services.

### **This Agreement**

This agreement consists of:

- (a) this Part 1, including the Agreement Details in this Part 1;
- (b) Part 2 (Terms and Conditions); and
- (c) the Schedules and Attachments to this agreement.

## AGREEMENT DETAILS

<b>Item 1</b>	<p><b>Details of Provider</b></p> <p><i>Name:</i> _____ <i>Trading As:</i> _____</p> <p><i>ACN:</i> _____</p> <p><i>ABN:</i> _____</p> <p><i>Address:</i> _____</p> <p><i>Phone:</i> _____ <i>Email:</i> _____</p>
<b>Item 2</b>	<p><b>Address for service of notices</b></p> <p><b>RMS</b></p> <p>Cc: Roads and Maritime Services Compliance and Regulatory Services</p> <p>110 George Street Parramatta NSW 2150</p> <p><i>Email:</i> _____ <i>Contact Name &amp; Position:</i> _____</p> <p><b>Provider</b></p> <p><i>Address:</i> _____</p> <p><i>Phone:</i> _____ :</p> <p><i>Email:</i> _____</p> <p><i>Contact Name &amp; Position:</i> _____</p>
<b>Item 3</b>	<p><b>Commencement Date</b></p> <p>The date when the last party executes this agreement.</p>
<b>Item 4</b>	<p><b>Provider Representative</b></p>

<b>Item 5</b>	<p><b>Premises at which Records to be kept (clause 7)</b></p> <p>Premises located at:</p> <p><b>Location for storage of electronic Records (if different to the above) (clause 7)</b></p> <p>Electronic records storage location: <i>[this may be offsite or virtual storage. If no physical address can be listed, provide name of storage provider]</i></p>
<b>Item 6</b>	<p><b>Insurances (Clause 12 and SCHEDULE A)</b></p> <p>The following insurances for at least the amounts, on the terms of and for the risks identified in <b>SCHEDULE A</b>:</p> <p>(a) Public liability insurance;</p> <p>(b) Motor Vehicle Comprehensive insurance for all Escort Vehicles used by Provider to provide Escort Vehicle Services;</p>

**EXECUTED as an agreement.**

Signed on behalf of **ROADS AND MARITIME SERVICES** by its Authorised Delegate in the presence of:

\_\_\_\_\_

Authorised Delegate (signature)

\_\_\_\_\_

Authorised Delegate (Name printed)

\_\_\_\_\_

Witness (signature)

\_\_\_\_\_

Witness (Name printed)

\_\_\_\_\_

Date:

**A.** Where the Provider is a corporation:

**SIGNED** by [insert Company name and ACN]

in accordance with section 127 of the Corporations Act

\_\_\_\_\_

Secretary (or additional Director) signature

\_\_\_\_\_

Director signature

\_\_\_\_\_

Name printed

\_\_\_\_\_

Name printed

\_\_\_\_\_

Date:



C. Where the Provider is a "sole trader or individual":

**SIGNED** by [insert sole trader or individuals name]

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Sole trader/Individuals signature

\_\_\_\_\_  
Name printed

\_\_\_\_\_  
Name printed

Date:

## **PART 2 (TERMS AND CONDITIONS)**

### **1 DEFINITIONS AND INTERPRETATION**

Clause 21 contains words and expressions that have special meanings in this agreement as well as provisions relating to the interpretation of this agreement.

### **2 ACCREDITATION OF PROVIDER**

#### **2.1 Accreditation**

On and from the Commencement Date, Roads and Maritime accredits Provider as an Accredited Escort Vehicle Provider on a non-exclusive basis to provide Escort Vehicle Services on the terms of this agreement.

#### **2.2 Nature of Accreditation**

Provider acknowledges and agrees that:

- (a) the objective of the accreditation is to ensure that providers have the necessary skills, competence, experience and capacity to provide Escort Vehicle Services under OSOM EVDS;
- (b) under the accreditation it is accredited to perform the Escort Vehicle Services to OSOM Operators under the Heavy National Vehicle Law for Phases 1 and 2;
- (c) it is not appointed as a provider of services to Roads and Maritime and is not appointed to perform any services for or on behalf of Roads and Maritime or the State of New South Wales and is not appointed to exercise any powers on behalf of the Roads and Maritime or the State of New South Wales;

#### **2.3 No Fees Payable by Roads and Maritime**

No fees, costs, charges or other amounts are payable by Roads and Maritime to Provider or Drivers under or in connection with this agreement.

### **3 TERM**

This agreement commences on the Commencement Date and continues until it is terminated in accordance with its terms.

#### **3.1 Voluntary surrender**

A Provider may at any time voluntarily surrender their accreditation by terminating this Accreditation Agreement by giving 30 days' notice to Roads and Maritime in writing. Any application, accreditation or renewal fee paid by the Provider is not refundable.

### **4 MANAGEMENT OF DRIVERS**

#### **4.1 Use of Drivers**

- (a) Provider may only allow Drivers (being those persons listed in the Driver Roster) and no other person to carry out the functions of an Authorised Escort Vehicle Driver in the provision of Escort Vehicle Services. Provider may amend the Driver Roster during the Term in accordance with the requirements set out in the OSOM Operating Guidelines.
- (b) Provider must ensure that all Drivers satisfy all of the following requirements (**Driver Requirements**) and must not include a person on the Driver Roster unless the person satisfies all Driver Requirements:

- (i) the Driver must be employed or contracted by Provider to provide Escort Vehicle Services (except that if Provider is an individual, Provider may also be a Driver provided they meet the other Driver Requirements);
  - (ii) the Driver must hold a valid and current appointment under the Road Rules 2014 to direct traffic (appointment as an Authorised Escort Vehicle Driver) which has not been cancelled;
  - (iii) the Driver must meet and continue to meet all of the criteria for Authorised Escort Vehicle Drivers set out by Roads and Maritime; and
  - (iv) the Driver must meet and continue to meet any other requirements for Authorised Escort Vehicle Drivers set out in the Operating Guidelines and this agreement.
- (c) Provider must report to Roads and Maritime as soon as practicable if it becomes aware at any time that a Driver does not satisfy all of the Driver Requirements including because the Driver:
- (i) is charged with, or convicted of, a serious driving offence or a criminal offence which has not previously been notified to Roads and Maritime;
  - (ii) may not be mentally or physically fit to perform the role of an Authorised Escort Vehicle Driver;
  - (iii) has provided Escort Vehicle Services in any circumstances where the Driver is not authorised to do so under the OSOM EVDS including by providing Escort Vehicle Services directly to an OSOM Operator rather than providing them through a Provider; or
  - (iv) commits any breaches of the standards set by this agreement or the OSOM Operating Guidelines, including any breaches of obligations relating to confidentiality, intellectual property, privacy, Probity Events, bribery, Conflict of Interest and representations concerning Roads and Maritime.
- (d) If a Driver no longer satisfies any of the Driver Requirements, Provider must ensure that the Driver does not provide Escort Vehicle Services for Provider and must remove the person from the Driver Roster.
- (e) If a Provider removes a person from its Driver Roster for reasons relating to the Driver's performance or satisfaction of requirements under the OSOM EVDS, it must inform Roads and Maritime of the reasons.
- (f) RMS may require a person to be removed from the Driver Roster if Roads and Maritime considers that the person does not satisfy any one of the Driver Requirements.
- (g) If a Driver's appointment as an Authorised Escort Vehicle Driver is suspended, Provider must ensure that the Driver does not provide Escort Vehicle Services for Provider unless and until the suspension is lifted.
- (h) If the Driver's appointment as an Authorised Escort Vehicle Driver is terminated by Roads and Maritime, Provider must ensure that that the Driver does not provide Escort Vehicles Services.

#### **4.2 Driver Appointments under the Road Rules 2014**

Provider acknowledges that nothing in this agreement affects the rights and discretion of Roads and Maritime to vary, suspend or cancel any appointment as an Authorised Escort Vehicle Driver under the OSOM EVDS.

#### **4.3 Compliance and Performance of Drivers**

- (a) Provider is responsible for all Escort Vehicles Services provided by Drivers for or on behalf of Provider and is vicariously responsible for the acts or omissions of any Driver

including any Driver as if it were the Provider's own act or omission. Provider must ensure that Drivers understand and comply with all requirements applicable to Authorised Escort Vehicle Drivers in this agreement, the OSOM Operating Guidelines and the Heavy Vehicle National Law.

- (b) Provider is in breach of this agreement if a Driver by any act or omission causes the Provider to breach this agreement, the OSOM Operating Guidelines or the Heavy Vehicle National Law in connection with the provision of services for Provider including if any act or omission causes Provider to breach its obligation to ensure that Drivers comply with all requirements applicable to Authorised Escort Vehicle Drivers in this agreement, the OSOM Operating Guidelines and the Heavy Vehicle National Law.
- (c) Provider must monitor, supervise, direct and assess the performance of Drivers by reference to the OSOM Operating Guidelines and undertake all necessary action to improve the performance of Drivers and to manage any unsatisfactory performance.
- (d) If Roads and Maritime is not satisfied with a Driver's conduct or a Driver's performance in the provision of Escort Vehicle Services, Roads and Maritime may, in addition to any other rights which it may have (including suspension or cancellation of the appointment of the Driver as an Authorised Escort Vehicle Driver), require the Provider to do any or all of the following:
  - (i) Provider to ensure that the Driver completes or re-completes any of the training requirements for Authorised Escort Vehicle Drivers set out in the OSOM Operating Guidelines or any other training required by Roads and Maritime;
  - (ii) Provider to supervise any or all of the Escort Vehicle Services being provided by the Driver; or
  - (iii) Provider to undertake any other steps reasonably required by Roads and Maritime to improve the Driver's performance or address Roads and Maritime' concern.
- (e) Provider remains responsible for the performance of its Drivers under clause 4.3(a) notwithstanding any action taken by Roads and Maritime under clause 4.3(d) or any other action taken by Roads and Maritime against the Driver, including any variation, suspension or cancellation of the Driver's appointment as an Authorised Escort Vehicle Driver.

## **5 GENERAL OBLIGATIONS OF THE PROVIDER**

### **5.1 Conduct of the Provider and its Personnel**

Provider must at all times, and must ensure that its Personnel and Drivers at all times:

- (a) conduct Escort Vehicle Services in accordance with this agreement and the OSOM Operating Guidelines;
- (b) comply, and remain compliant with all requirements in the OSOM Operating Guidelines, including the Provider maintaining eligibility requirements for accreditation as a Provider;
- (c) not engage in or accept an offer to engage in corrupt or dishonest conduct;
- (d) not engage in conduct that may bring Roads and Maritime into disrepute;
- (e) perform all of its obligations under this agreement in a diligent and professional manner, with transparency and integrity, and without any Conflicts of Interest;
- (f) act at all times in accordance with the standards of conduct required of a public official under the *Independent Commission Against Corruption Act 1988 (NSW) (Act)* and if any of the Provider and its Personnel are not public officials subject to the Act, act in

accordance with the standards of conduct required under the Act, as if they were a public official under the Act;

- (g) comply with the Statement of Business Ethics required for dealings between Roads and Maritime and the private sector as amended from time to time, the current form of which is available at [http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/business-ethics/business\\_ethics\\_statement.pdf](http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/business-ethics/business_ethics_statement.pdf); and
- (h) comply with all Laws, including the Heavy Vehicle National Law, in connection with provision of Escort Vehicle Services and when conducting business for Provider.

## **5.2 Provider's Personnel**

Provider must ensure that any Personnel who may be required to comply with any eligibility criteria described in the OSOM Operating Guidelines, comply with the relevant criteria.

## **5.3 Escort Vehicles**

Provider must ensure that all Escort Vehicles used to provide Escort Vehicles Services for Provider comply with all requirements in the OSOM Operating Guidelines and Heavy Vehicle National Law.

## **5.4 Variation to OSOM Operating Guidelines**

- (a) RMS may at any time amend the OSOM Operating Guidelines. Roads and Maritime will make the OSOM Operating Guidelines available in the form in which they are current from time to time, on the Roads and Maritime website.
- (b) Provider must comply, and ensure that Drivers comply with the most current version of the OSOM Operating Guidelines.

## **5.5 Performance of Escort Vehicle Services in a safe manner**

Without limiting clause 5.1, Provider must at all times, and must ensure that its Personnel and Drivers at all times:

- (a) ensure, so far as is reasonably practicable, that all Escort Vehicle Services are provided safely and in a manner that does not put the health and safety of any person at risk, including any member of the public, any personnel of the OSOM Operator or any Personnel of Roads and Maritime or the Police or the Provider;
- (b) maintain and provide to Roads and Maritime (in its capacity as regulator of the OSOM EVDS) records and information regarding health and safety matters arising in connection with Escort Vehicle Services as required by Roads and Maritime from time to time (in its capacity as regulator of the OSOM EVDS); and
- (c) following a Health and Safety Incident in connection with Escort Vehicle Services provided for an OSOM Movement:
  - (i) immediately upon becoming aware of the Health and Safety Incident, notify Roads and Maritime (in its capacity as regulator of the OSOM EVDS) of that Health and Safety Incident;
  - (ii) undertake a risk assessment in relation to the Health and Safety Incident and ensure all reasonably practicable control measures identified during that risk assessment are implemented to eliminate, so far as is reasonably practicable, any risk of a similar incident occurring again;
  - (iii) maintain any records relating to the Health and Safety Incident; and
  - (iv) at the request of Roads and Maritime, provide Roads and Maritime with a written report of the Health and Safety Incident.

## **5.6 Delegation Prohibited**

The Accreditation under this Agreement is exclusive to the Provider and Provider is not entitled to assign, transfer, delegate or otherwise deal with this accreditation.

## **5.7 Relationship of the Parties**

- (a) RMS regulates the operation of heavy vehicles and heavy combinations on the road network in NSW. This agreement requires Provider to meet certain standards of capacity and competence to conduct Escort Vehicle Services in NSW for an OSOM Movement and to provide to OSOM Operators.
- (b) Provider is accredited to conduct Escort Vehicles Services for an OSOM Movement and to OSOM Operators. It is not appointed as a provider of services to Roads and Maritime and is not appointed to perform any services to any OSOM Operator for or on behalf of Roads and Maritime or the State of New South Wales and Provider is not appointed to exercise any powers on behalf of Roads and Maritime or the State of New South Wales. This agreement does not require Provider to provide any service to Roads and Maritime and the parties are independent of each other.
- (c) Nothing in this agreement is to be treated as creating any relationship of employer or employee, principal and agent, customer and service provider, partnership or joint venture between Roads and Maritime and:
  - (i) Provider;
  - (ii) any Driver;
  - (iii) any of Provider's subcontractors; or
  - (iv) any of Provider's or Provider's subcontractors' Drivers or other Personnel.
- (d) Provider must not act and does not have any authority to act as agent of or in any way bind or commit Roads and Maritime to any obligation and must not make any representation or statement to any OSOM Operator or any other person in its capacity as an accredited provider, that: it is an agent of Roads and Maritime or the State of New South Wales; it is a provider of services to Roads and Maritime or the State of New South Wales; it is performing the services for or on behalf of Roads and Maritime or the State of New South Wales; or that it is exercising any powers on behalf of Roads and Maritime or the State of New South Wales.
- (e) Provider acknowledges that Roads and Maritime is not a party to, and does not take any responsibility or accept any liability in respect of, any contracts or arrangements between Provider and any Driver, or between Provider and any OSOM Operator.
- (f) Provider acknowledges that the provisions of this agreement and the OSOM Operating Guidelines are purely contractual in nature as between Roads and Maritime and Provider and do not give Provider any rights against Roads and Maritime under administrative law.

## **5.8 Provider's Personnel**

- (a) If requested by Roads and Maritime, Provider must authorise or obtain all relevant consents for Roads and Maritime to conduct criminal records checks and police checks in relation to any or all of Provider's Personnel.
- (b) Provider must ensure that its Personnel:
  - (i) hold all relevant qualifications including any required licences; and
  - (ii) comply with all WHS Laws.
- (c) Provider must ensure that any Personnel, who may be required to comply with any eligibility criteria described in the OSOM Operating Guidelines comply with the relevant criteria and that the Drivers comply with the eligibility criteria for Authorised Escort Vehicle Drivers described in the OSOM Operating Guidelines.

- (d) Provider must immediately notify Roads and Maritime if any of its Personnel are involved in, or are alleged to be or are suspected of being involved in, any criminal activity, any serious driving offences, or any misconduct.

## **5.9 Work health and safety**

Without limiting clause 5.1, Provider must at all times comply with its duties under WHS Laws including the *Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011*.

## **5.10 Responsibility for Salary and Entitlements**

- (a) Provider acknowledges and agrees that:
  - (i) it is solely responsible and liable for all remuneration including the payment of salary, wages, holiday pay, sick pay and all other employee benefits (including, superannuation contribution benefits) to and on behalf of all persons engaged by Provider in connection with this agreement, including Drivers, and for the making of tax instalment deductions in respect of the salary and wages (where relevant) of all such persons which may arise in connection with this agreement; and
  - (ii) neither Provider nor any of its employees, contractors or agents, including Drivers, is entitled to payment of any such amounts from Roads and Maritime.
- (b) If under any Laws, Roads and Maritime is considered an employer or principal employer and is obliged to make payments in respect of the amounts paid or benefits provided to or in relation to any employee or contractor of Provider, then Provider:
  - (i) must make all such payments on behalf of Roads and Maritime; and
  - (ii) indemnifies Roads and Maritime against all such payments made by Roads and Maritime, including:
    - (A) any additional tax, levy, or other payment whatsoever, including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; and
    - (B) remuneration, annual leave, sick leave, long service leave or other leave, or any other payment or entitlement to be paid or provided to such persons.

## **6 PROVIDER REPRESENTATIVE**

### **6.1 Appointment of Representative**

Provider appoints the Provider Representative as Provider's representative for the purposes of all matters arising in connection with this Agreement.

### **6.2 Authority of Representative**

Provider warrants that the Provider Representative has the authority and legal power to sign documentation on Provider's behalf and to bind Provider in respect of all matters arising in connection with this agreement and Escort Vehicle Services.

### **6.3 Substitution of Representative**

- (a) Provider must give Roads and Maritime prior notice of any proposal to substitute the Provider Representative. The notice must include details of:
  - (i) the reason for the substitution;
  - (ii) the name, title, position and relevant experience of the proposed substitute; and
  - (iii) the date on which Provider proposes the substitution is to become effective.

- (b) RMS will notify Provider if it objects to a proposed substitute within five Working Days after its receipt of the notice given by Provider under clause 6.3(a).
- (c) If required by Roads and Maritime, Provider must provide all additional information required by Roads and Maritime to make a decision in relation to the proposed substitution.
- (d) If Roads and Maritime objects to the appointment of a proposed substitute pursuant to clause 6.3(b), Provider will not appoint the proposed substitute as the Provider Representative.
- (e) If Roads and Maritime does not object to the proposed new representative in the timeframe specified in clause 6.3(b) or within 5 Working Days after receipt of any additional information required pursuant to clause 6.3(c), the proposed new representative becomes the Provider Representative replacing the previous Provider Representative.

## **7 RECORD KEEPING, REPORTING AND COMPLIANCE ASSURANCE**

### **7.1 Records**

- (a) Provider must complete, retain and supply to Roads and Maritime and the OSOM Operator all Records in connection with the Escort Vehicle Services as required by and in accordance with the OSOM Operating Guidelines.
- (b) Provider must securely collect, maintain and archive the Records, including all OSOM Movement Records and records evidencing that the Drivers and the Escort Vehicles used by Provider satisfy the requirements in the OSOM Operating Guidelines. All Records must be kept in English, and legible.
- (c) Provider must make the Records available to Roads and Maritime for inspection and audit when requested to do so by Roads and Maritime at any time during the Term or after termination of this agreement.
- (d) Provider must keep each of the Records for at least 7 years from the date that the last entry was made in that Record.

### **7.2 Providing access to Roads and Maritime**

Provider must at all reasonable times give Roads and Maritime access to:

- (a) any premises and sites used by Provider in connection with the provision of Escort Vehicle Services;
- (b) the Escort Vehicles used by Provider to provide the Escort Vehicle Services (whether those vehicles are owned by Provider, another person or organisation); and
- (c) the Records and any other information maintained by Provider or a Driver in connection with the Escort Vehicle Services or otherwise required pursuant to this Agreement,

to allow Roads and Maritime to audit and monitor Provider's and each Driver's performance under this agreement.

### **7.3 Compliance Assurance**

- (a) Provider will allow Roads and Maritime to audit the performance of Escort Vehicle Services and compliance with the agreement and OSOM Operating Guidelines by Provider and any Driver, by any reasonable means at all reasonable times, including by doing the following:
  - (i) travelling with any Driver during provision of Escort Vehicle Services and entering any premises used by Provider in connection with Escort Vehicle Services;



- (ii) conducting on-road intercepts of OSOM Movements(which may be carried out by Roads and Maritime authorised officers or police officers);
  - (iii) inspect and enter the Vehicles used by Provider to provide the Escort Vehicle Services;
  - (iv) inspect the Records and other records in Provider's possession or control relating to Escort Vehicle Services; and
  - (v) investigate complaints in accordance with the OSOM Operating Guidelines.
- (b) If the consent of any other person is required for Roads and Maritime to undertake the audit under clause 7.3(a), Provider will procure such consent.

#### **7.4 Reporting and notifications**

- (a) Provider must submit to Roads and Maritime all reports required by the OSOM Operating Guidelines.
- (b) Without limiting any other obligations of Provider under this agreement, Provider must notify Roads and Maritime of any change of circumstances in any matter related to Provider's eligibility for accreditation as set out in the OSOM Operating Guidelines within seven days of change.
- (c) At any time during the Term or after this agreement is terminated, Roads and Maritime may request Provider to provide to Roads and Maritime information and Records relating to a Driver or a former Driver, including information relating to the person's conduct, provision of Escort Vehicle Services and compliance with the requirements of the OSOM EVDS. Roads and Maritime may use this information to conduct an investigation into the person and to assess whether to vary, suspend or cancel the person's appointment as an Authorised Escort Vehicle Driver or to take other action against the person. Provider agrees to provide to Roads and Maritime all such information within the time reasonably required by Roads and Maritime.

### **8 EVALUATION AND REVIEW**

At any time during the Term and after this agreement is terminated, Provider must participate in any evaluation or review of the OSOM EVDS as requested by Roads and Maritime, including any independent evaluation or review conducted by a third party. Provider must promptly provide all reasonable assistance as required in the evaluation or review, including to provide any feedback, self-assessment and information requested and to procure Drivers to participate in the evaluation or review.

### **9 REPRESENTATIONS ABOUT Roads and Maritime**

#### **9.1 Consent to use of Provider's name**

Provider consents to Roads and Maritime using Provider's name in statements referring to Provider as an accredited provider, including by including Provider on a list of accredited providers published on a website operated by Roads and Maritime, if Roads and Maritime chooses in its discretion to do so.

#### **9.2 Permitted statements**

During the Term of this agreement, and subject to compliance with clause 5.7(d), Provider may describe its business as accredited by Roads and Maritime solely and strictly as expressly permitted in the OSOM Operating Guidelines or as otherwise notified by Roads and Maritime.

#### **9.3 Prohibitions**

- (a) Provider must not, and must ensure that the Provider Representative and Personnel and Drivers do not in any circumstances (including in any advertising, promotional material or public statements):
  - (i) make any misrepresentations or false or misleading statements in relation to the function of Roads and Maritime in relation to the provision of Escort Vehicle Services or the Heavy Vehicle National Law; or
  - (ii) do anything that exposes Roads and Maritime to negative publicity or might reasonably be expected to bring Roads and Maritime into disrepute.
- (b) Subject to clause 9.2 and any prior written consent obtained from Roads and Maritime, Provider must not, and must ensure that the Provider Representative and Personnel and Drivers do not in any circumstances (including in any advertising, promotional material or public statements):
  - (i) use any trade mark or logo of Roads and Maritime;
  - (ii) expressly or impliedly claim or represent that Roads and Maritime endorses, recommends, approves or authorises Provider, any Driver or any services provided by Provider or any Driver;
  - (iii) make any other representations about the status of its business or relationship with Roads and Maritime; or
  - (iv) make or permit any public statement concerning Roads and Maritime or this agreement, including by way of disclosure of information or through any communications media.
- (c) RMS has absolute discretion to give or withhold any consent sought by Provider under clause 9.3(b).

## **10 CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

### **10.1 Confidentiality**

- (a) Where Provider receives Confidential Information, Provider must at all times:
  - (i) keep the Confidential Information secret and preserve its confidential nature;
  - (ii) not use or permit the use of Confidential Information for any purpose other than a purpose permitted by this agreement;
  - (iii) not disclose or permit the disclosure of Confidential Information to any person except as permitted in clause 10.1(b);
  - (iv) only copy or reproduce Confidential Information for the purposes of this agreement or with the prior written consent of Roads and Maritime;
  - (v) establish and maintain appropriate security measures to protect the Confidential Information against unauthorised access, use or disclosure;
  - (vi) immediately notify Roads and Maritime of any unauthorised access to, use or disclosure of any Confidential Information;
  - (vii) not reverse engineer, decompile or disassemble any Confidential Information; and
  - (viii) ensure that adequate security measures have been taken to protect Confidential Information and Personal Information from misuse or loss or from unauthorised access, use, modification or disclosure.
- (b) This agreement does not prohibit the disclosure of Confidential Information by Provider or a Driver in the following circumstances:
  - (i) the disclosure is specifically contemplated and permitted by this agreement;

- (ii) the disclosure of Confidential Information is to the Personnel of the Provider who need that information to enable Provider to provide Escort Vehicle Services or comply with its obligations under this agreement and the Personnel have executed a confidentiality agreement if required by Roads and Maritime;
  - (iii) the disclosure is required by a court or governmental or administrative authority; or
  - (iv) the disclosure is required by an applicable Law.
- (c) Provider must ensure that its Personnel are made aware of and comply with:
- (i) Provider's obligations of confidence set out in this clause 10; and
  - (ii) all applicable Privacy Laws.

## 10.2 GIPAA

- (a) Provider acknowledges that Roads and Maritime may be required to publish certain information concerning this agreement in accordance with sections 27 to 35 of the *Government Information (Public Access) Act 2009* (NSW).
- (b) If Roads and Maritime advises Provider that it is required to do so and Provider reasonably believes that any part of the agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then Provider must immediately advise Roads and Maritime in writing, identifying the provisions and providing reasons so that Roads and Maritime may consider seeking to exempt those provisions from publication.
- (c) Within three days of receiving a written request from Roads and Maritime, Provider must (at no cost to Roads and Maritime) provide Roads and Maritime with immediate access to information referred to in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in section 121(2) of the *Government Information (Public Access) Act 2009* (NSW)) contained in records held by Provider, in the format and using the medium reasonably required by Roads and Maritime. This is a fundamental term of this agreement.

## 10.3 Privacy

Notwithstanding any permitted handling of Confidential Information under this agreement, Provider must, and must ensure that its Personnel and Drivers must:

- (a) not do any act or engage in any practice:
  - (i) that would breach any of its obligations; or
  - (ii) which if done or engaged in by Roads and Maritime, would breach any of Roads and Maritime's obligations,
 under any Privacy Laws;
- (b) ensure that it uses, accesses, retains and discloses any Personal Information, obtained either directly or indirectly as a consequence of this agreement only as authorised in this agreement;
- (c) when collecting Personal Information from any person (including Drivers), provide the person with a written privacy statement as required by the Privacy Laws or otherwise required by Roads and Maritime and obtain the person's authority:
  - (i) to disclose their Personal Information to Roads and Maritime; and
  - (ii) for Roads and Maritime to disclose their full name, address, licence number, licence expiry date and licence State/Territory of issue, to any Australian State or Territory government agency having a role relating to licensing or vehicle regulation;

- (d) notify Roads and Maritime immediately upon:
  - (i) becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 10.3, by Provider or any of Provider's Personnel;
  - (ii) receiving a complaint relating to privacy; or
  - (iii) receiving a request from an individual for access to, alteration, amendment or correction of Personal Information used by Roads and Maritime in connection with this agreement;
- (e) comply with all reasonable directions of Roads and Maritime in relation to the care, protection of, access to, and disposal of, Personal Information held in connection with this agreement; and
- (f) ensure that any of Roads and Maritime' Personnel who may be handling Personal Information in connection with this agreement, comply with this clause 10.3 as if they were Provider.

#### **10.4 Intellectual Property**

- (a) Provider acknowledges and agrees that Roads and Maritime retains all Intellectual Property and other rights in the Roads and Maritime Materials and, other than the rights granted under this agreement, Provider obtains no Intellectual Property or other rights in the Roads and Maritime Materials.
- (b) Provider must promptly notify Roads and Maritime on becoming aware of any actual or suspected infringement of the Intellectual Property or other rights of Roads and Maritime.

### **11 WARRANTIES, EXCLUSIONS AND INDEMNITIES**

#### **11.1 Warranties**

Provider warrant on entering into the agreement and at all times during the Term that:

- (a) the Provider Representative, each Driver and Provider are not subject to a prohibition under the Heavy Vehicle National Law which prevents any of them from providing Escort Vehicle Services;
- (b) each Driver satisfies all of the Driver Requirements; and
- (c) the Escort Vehicle Services will be provided in a diligent manner to the standard of skill and care expected of a provider experienced in providing Escort Vehicle Services for OSOM Movements in accordance with the OSOM Operating Guidelines.

#### **11.2 Bribery and codes**

- (a) Provider agrees on entering into this agreement and at all times during the Term that it must not and must ensure that the Provider and each of the Provider's Personnel and Drivers does not engage in or condone any bribery, corruption or collusion in the provision of Escort Vehicle Services.
- (b) Provider must immediately report any bribery, corruption or collusion of which it becomes aware to Roads and Maritime and the Independent Commission Against Corruption.
- (c) In this clause references to "bribery" include requesting or accepting any benefits of any kind from or on behalf of an OSOM Operator for Provider or a Driver (whether the benefit is for Provider or any Driver or a third person) but excludes any fee which Provider usually charges for provision of Escort Vehicle Services.

#### **11.3 Conflict of Interest**

- (a) Provider warrants that no Conflict of Interest exists at the date it enters into this agreement.
- (b) Provider must immediately inform Roads and Maritime upon my becoming aware of the existence or possibility of a Conflict of Interest during the Term.
- (c) Provider must at all times during this agreement use its best endeavours to ensure that no action is taken by itself, or its Personnel, which results in a Conflict of Interest.
- (d) In particular, but without limiting clause 11.3(c), Provider must take all necessary and proper precautions to prevent its Personnel from receiving or making, providing or offering to any person a gift, entertainment, payment, loan or other consideration from any OSOM Operator or any other person seeking to obtain Escort Vehicle Services from Provider.
- (e) Provider must within 5 Working Days after a request by Roads and Maritime, advise Roads and Maritime in writing of all potential and actual Conflicts of Interest, including details of the conflict, the Personnel involved, and the steps taken to address the conflict.

#### **11.4 Exclusion of warranties and liability**

- (a) RMS excludes from this agreement all conditions, warranties and terms implied by statute, general law or custom, except the express warranties given by Roads and Maritime in this agreement.
- (b) RMS and its Personnel limit all liability, whether arising in contract, tort (including negligence) or otherwise for any and all claims that Provider or Drivers have, or may have had but for this clause 11.4, against Roads and Maritime or its Personnel under or in connection with this agreement, to \$5,000.00.

#### **11.5 Indemnity**

Provider will indemnify Roads and Maritime and its Personnel (**Those Indemnified**) and keep Those Indemnified indemnified in respect of all loss, damage, liabilities, costs and expenses (including legal costs and expenses) directly or indirectly incurred or suffered by them (including as a result of a claim by any person against any of Those Indemnified) in connection with:

- (a) any breach of this agreement by Provider including arising from the act or omission of any Driver;
- (b) any negligence by Provider or any Driver arising out of or relating to activities under or in connection with any of this agreement, OSOM EVDS and any Escort Vehicle Services;
- (c) any personal injury or death to any person (including any OSOM Operator and its Personnel and Drivers) and damage to property of any person (including any OSOM Operator, its Personnel, Drivers and any third party) in any way in connection with any Escort Vehicle Services provided by or for Provider; and
- (d) any unlawful act or omission of Provider or any of its Personnel or Drivers.

## **12 INSURANCE**

### **12.1 Obtaining and Maintaining Insurance**

Before the Commencement Date, Provider must obtain and then maintain the policies of insurance listed in item 6 of the Agreement Details for at least the amounts, on the terms of and for the risks identified in Schedule A (**Insurances**). Provider must ensure that the Insurances cover all Drivers (whether subcontractor or employee of Provider) in their provision of Escort Vehicle Services.

### **12.2 Proof of Insurances**

Provider must provide to Roads and Maritime certificates of currency issued by each insurer for each of the Insurances as required by the OSOM Operating Guidelines and as otherwise requested by Roads and Maritime.

## **13 PROBITY EVENT**

### **13.1 Probity Event Notice by Provider**

Provider must give notice to Roads and Maritime as soon as it becomes aware that a Probity Event has occurred or is likely to occur (**Probity Event Notice**).

### **13.2 Probity Event Notice by Roads and Maritime**

RMS may give notice to Provider if Roads and Maritime becomes aware that a Probity Event has occurred or is likely to occur (**Probity Event Notice**).

### **13.3 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.

### **13.4 Probity Investigations**

- (a) Following the issue of a Probity Event Notice, Provider must promptly comply with any reasonable request from Roads and Maritime for access to Provider's Personnel for the purpose of undertaking any investigations that Roads and Maritime may wish to carry out in relation to the actual or likely occurrence of the Probity Event.
- (b) Provider must use reasonable endeavours to ensure that all of its Personnel co-operate with Roads and Maritime and comply with any reasonable requests for information that Roads and Maritime may make in the course of its investigations.

### **13.5 Remedial Action**

Upon the issue of a Probity Event Notice the Parties must meet at a time nominated or agreed by Roads and Maritime to discuss the occurrence of the Probity Event. During any such meeting, Roads and Maritime and Provider must use reasonable endeavours to agree on the actions to be taken by Provider to reverse the effect of the Probity Event.

### **13.6 RMS may direct Remedial Action**

If Roads and Maritime and Provider are unable to agree within 5 Working Days of such meeting (or any longer period Roads and Maritime may agree) Roads and Maritime may give notice to Provider setting out the action it must take to address the adverse effect of the Probity Event, and Provider must comply with any such notice as soon as possible and in any event within 5 Working Days after receiving the notice.

## **14 TERMINATION AND SUSPENSION**

### **14.1 Termination without cause**

Either Roads and Maritime or Provider may terminate this agreement at any time without cause in their absolute discretion by giving at least 30 days' notice of such termination to the other.

### **14.2 Termination by Roads and Maritime for cause**

Without prejudice to any other rights Roads and Maritime may have under this agreement or at Law, Roads and Maritime may terminate Provider's accreditation and this agreement immediately by issuing a Notice to Provider if:

- (a) (**Breach of agreement**) Provider breaches any term of this agreement and:
  - (i) the breach is not capable of remedy; or

- (ii) the breach is capable of remedy and Provider fails to:
  - (A) remedy the breach within 5 days (or such longer time as Roads and Maritime states) after receiving notice from Roads and Maritime requiring the breach to be remedied; and
  - (B) satisfy Roads and Maritime that Provider has taken action to prevent a re-occurrence of the breach;
- (b) **(Termination after suspension)** if Roads and Maritime terminates this agreement under clause 14.4(e)(iii);
- (c) **(Insolvency)** Provider becomes subject to an Insolvency Event;
- (d) **(Wrongful assignment)** Provider assigns, transfers, delegates or otherwise deals with, or purports to assign, transfer, delegate or otherwise deal with, its rights or obligations otherwise than as permitted by this agreement, including any breach of clause 5.4;
- (e) **(Fraud or dishonesty)** Provider or any of its Personnel have been found guilty of an offence involving fraud or dishonesty or punishable on conviction by imprisonment;
- (f) **(Misconduct)** Roads and Maritime is satisfied that Provider or any of its Personnel are guilty of an offence or other misconduct under the Heavy Vehicle National Law;
- (g) **(Probity Event)** a Probity Event is not remedied to the satisfaction of Roads and Maritime or within the time required by Roads and Maritime; or
- (h) **(Other termination set out in OSOM Policies and Procedures)** any other event or circumstance entitling Roads and Maritime to terminate a provider as an accredited provider of Escort Vehicle Services set out in the OSOM Policies and Procedures.

### 14.3 Consequences of Termination

If the agreement is terminated, Provider must from the date of termination:

- (a) cease providing Escort Vehicle Services;
- (b) ensure that its Drivers cease providing Escort Vehicle Services (except Escort Vehicle Services which the Driver is otherwise authorised to provide for another accredited provider under the OSOM EVDS);
- (c) cease, and ensures that its Drivers cease, representing that Provider is accredited or authorised to provide Escort Vehicle Services; and
- (d) if required by Roads and Maritime, return all Roads and Maritime Materials, which are not in the public domain, Roads and Maritime's Confidential Information and any Personal Information of Roads and Maritime, which Provider has received from Roads and Maritime, or, if required by Roads and Maritime, destroy such Roads and Maritime Materials, Confidential Information and Personal Information and provide a statutory declaration (signed by a duly authorised officer or representative of Provider) to Roads and Maritime confirming that Provider has destroyed such Roads and Maritime Materials, Confidential Information and Personal Information.

### 14.4 Suspension of Provider by Roads and Maritime

- (a) Without limiting any other rights of Roads and Maritime under this agreement and in addition to such rights (including any rights of Roads and Maritime to terminate this agreement), if Roads and Maritime believes on reasonable grounds that:
  - (i) Provider has breached this agreement (including as a result of the acts or omissions of a Driver) or the Provider or the Driver has breached the OSOM Policies and Procedures or Heavy Vehicle National Law;
  - (ii) a Probity Event has occurred;

- (iii) the performance of Provider (including as a result of the acts or omissions of a Driver) under this agreement is unsatisfactory (whether or not Provider is in breach of this agreement);
- (iv) Provider has knowledge of and fails to report to Roads and Maritime that a Driver is involved in, or alleged to be or is suspected of being involved in, any criminal activity; or
- (v) any other event may have occurred which permits Roads and Maritime to terminate Provider's accreditation as an accredited provider of Escort Vehicle Services and this agreement,

then Roads and Maritime may suspend the Provider's accreditation to provide Escort Vehicle Services under this agreement with immediate effect by issuing a Notice to Provider or Roads and Maritime may notify the Provider that it is undertaking a review to determine whether to suspend or terminate Provider's accreditation to provide Escort Vehicle Services.

- (b) A notice issued by Roads and Maritime under clause 14.4(a) must specify the nature of the acts or omissions giving rise to the grounds for suspension or potential suspension or termination, and give Provider sufficient information to allow it to investigate such acts or omissions.
- (c) If a notice is given to Provider pursuant to clause 14.4(a), Provider must:
  - (i) submit a written response to Roads and Maritime (which addresses the matters raised in the notice) within the time stipulated in the notice and if no time is stipulated then within 10 Working Days after the date of the notice issued by the Roads and Maritime;
  - (ii) participate in any discussions required by Roads and Maritime;
  - (iii) provide any additional information or documentation required by Roads and Maritime; and
  - (iv) if Roads and Maritime issues a suspension notice, cease providing Escort Vehicle Services unless and until the operation of this agreement resumes under clause 14.4(e)(i).
- (d) RMS will conduct a review of the matters giving rise to the notice issued under clause 14.4(a), including the Provider's and/or a Driver's conduct, after receipt of Provider's response pursuant to clause 14.4(c) or if no response is received by the required date following that date (**Review**).
- (e) On completion of a Review conducted by Roads and Maritime including in circumstances, where Provider has failed to provide information required by Roads and Maritime pursuant to clause 14.4(c), Roads and Maritime may, by issuing a Notice or Notices to Provider do all or any combination of the following and in any sequence:
  - (i) if Roads and Maritime has issued a suspension notice, allow the operation of this agreement to resume from a specified date;
  - (ii) if any of the events described in clause 14.4(a)(i) to 14.4(a)(v) has occurred or Roads and Maritime believes on reasonable grounds that any of them have occurred or Roads and Maritime is not satisfied with the Provider's responses during the Review or any other issues are identified concerning Provider's accreditation or compliance with the agreement during the Review:
    - (A) issue a suspension notice, if one has not already been issued;
    - (B) require Provider to take any course of action or vary the Provider's accreditation, or both; and



- (C) require Provider to take any course of action or vary the Provider's accreditation, or both, prior to the resumption of the Escort Vehicle Services, if a suspension notice is or has been issued; and
- (iii) terminate this agreement with effect from a specified date, if any of the events described in clause 14.4(a)(i) to 14.4(a)(v) has occurred or Roads and Maritime believes on reasonable grounds that any of them have occurred or Roads and Maritime is not satisfied with the Provider's responses during the Review.
- (f) If any of the events described in clause 14.4(a)(i) to 14.4(a)(v) has occurred or Roads and Maritime believes on reasonable grounds that any of them have occurred or Roads and Maritime is not satisfied with the Provider's responses during the Review or any other issues are identified concerning Provider's accreditation or compliance with this Agreement during the Review, if requested by Roads and Maritime, Provider will reimburse to Roads and Maritime all costs, expenses and damages incurred or suffered by Roads and Maritime as a consequence of any of the following: the Review, the suspension, resumption or termination of the agreement.
- (g) If the agreement is terminated under clause 14.4(e)(iii), Provider must comply with clause 14.3.
- (h) If Roads and Maritime notifies Provider that it is considering suspending or terminating Provider's accreditation to provide Escort Vehicle Services, Roads and Maritime continues to be entitled to suspend the Provider's accreditation with immediate effect by using a notice to the Provider at any time during the process set out in this clause 14.4, if at any time Roads and Maritime believes on reasonable grounds that any event set out in clauses 14.4(a)(i) to 14.4(a)(v) has occurred.
- (i) Nothing in this clause 14.4 restricts Roads and Maritime from exercising its rights of termination pursuant to clauses 14.1 and 14.2 or otherwise at Law including during any period in which Roads and Maritime has exercised any rights pursuant to this clause 14.4.

## 15 ASSIGNMENT AND CHANGE OF CONTROL

- (a) Provider must not assign any right or interest under this agreement without Roads and Maritime' prior written consent.
- (b) If there is a change in Control of Provider, then Roads and Maritime may immediately terminate this agreement by giving notice to Provider.

## 16 DISPUTES

- (a) Neither party may commence legal proceedings or arbitration in relation to this agreement (except proceedings seeking interlocutory relief) in respect of any dispute in relation to this agreement (**Dispute**) unless it has first complied with this clause 16.
- (b) A party claiming that a Dispute has arisen must notify the other party with reasonable details of the Dispute.
- (c) Within 14 days after a notice under clause 16(b) each party must nominate in writing to the other party an employee of that party to address the Dispute with the other party.
- (d) During the 30 day period after a notice is given under clause 16(c) (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.
- (e) If the Dispute is not resolved within the time referred to in or agreed under clause 16(d), then if both parties, in their absolute discretion, agree to submit the Dispute to mediation, the Dispute must be referred:

- (i) for mediation, in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and
  - (ii) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a **mediator** nominated by the then current Chief Executive Officer of ACDC or the Chief Executive Officer's nominee (or if no such person is available or willing to nominate a mediator, the then current President of the Law Society of New South Wales).
- (f) Except where Roads and Maritime has suspended this agreement under clause 14.4, each party must continue performing their obligations in accordance with this agreement during any Dispute.
- (g) Nothing in this clause affects a party's rights to terminate this agreement or Roads and Maritime's right to suspend this agreement under clause 14.4.

## 17 WAIVER

Failure by a party to compel performance of any term or condition of this agreement does not constitute a waiver of that term or condition (unless it is in writing signed by the party with the right to insist on performance of that term or condition) and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

## 18 NOTICES

### 18.1 Method of giving Notices

All notices must be in writing and must be given by any one of the following means:

- (a) by delivering it to a party's Address;
- (b) by sending it to a party's Address by ordinary post; or
- (c) by sending it by email to the Provider's nominated email address (in the Details of this Agreement)

### 18.2 Time of Receipt

A notice will be deemed to be given and received:

- (a) if given in accordance with clause 18.1(a), on the Working Day of delivery in the place of delivery;
- (b) if given in accordance with clause 18.1(b), three clear Working Days after the day of posting in the place of delivery;
- (c) if given by Roads and Maritime in accordance with clause 18.1(c), the earlier of when the email is opened by the Provider and the next Business Day after the time at which it enters the Provider's system (provided that Roads and Maritime does not receive a delivery failure or out of office message).

## 19 GOVERNING LAW

This agreement will be governed and interpreted in accordance with the Laws for the time being in force in New South Wales and the parties agree to be subject to the non-exclusive jurisdiction of the courts of New South Wales.

## 20 GENERAL

### 20.1 Rights of Roads and Maritime

Any express statement of a right of Roads and Maritime under the agreement is without prejudice to any other right of Roads and Maritime expressly stated in the agreement or arising at Law.

## 20.2 Severability

If any provision of the agreement is invalid and or unenforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision will be and continue to be valid and enforceable in accordance with their terms.

## 20.3 Statutory Rights

Nothing in the agreement will limit or restrict the ability of Roads and Maritime to undertake any action that it is required to take or may take under any applicable Laws.

## 20.4 Costs

Except as otherwise set out in this agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this agreement and any documents related to this agreement.

## 20.5 Entire agreement

This agreement states all the terms of the agreement between the parties in respect of its subject matter, and supersedes any previous representations, warranties, arrangements and agreements between the parties in respect of its subject matter.

## 20.6 Good faith

The parties expressly exclude any implied duty of good faith in the exercise of their rights under this agreement.

## 20.7 Survival of Obligations

The provisions of this agreement which are capable of having effect after the expiration or termination of the agreement will remain in full force and effect following the expiration or termination of this agreement.

## 20.8 Variation of Agreement

Except as otherwise provided in this agreement, Roads and Maritime may vary the agreement at any time by giving 60 days' notice to Provider and the variation takes effect at the end of that 60 day period.

## 21 DEFINITIONS & INTERPRETATION

### 21.1 Definitions

These are the capitalised terms used in this document and their meaning:

"**Address**" means the address of a party specified in item 2 of the Agreement Details.

"**Agreement Details**" means the Agreement Details set out in Part 1 of this agreement.

"**Auditor**" means a person authorised by Roads and Maritime to audit the performance of Provider under this agreement.

"**Authorised Escort Vehicle Driver**" means a person, other than a Police officer, appointed by Roads and Maritime under the OSOM EVDS to drive Escort Vehicles and to exercise traffic direction powers under rule 304 of the Road Rules 2014 (NSW) .

"**Commencement Date**" means the date specified in item 3 of the Agreement Details.

"**Confidential Information**" means any information provided by Roads and Maritime to Provider or any of its Personnel, or otherwise obtained by Provider or any of its Personnel, whether obtained before or after the execution of this agreement, in connection with this agreement or Roads and Maritime in any way. Without limiting the foregoing:

- (a) Confidential Information includes confidential business information, documents, records, financial information, reports, Intellectual Property, specifications, technical information and forecasts which relate to Roads and Maritime, Escort Vehicle Services, OSOM Policies and Procedures, the fact that the Confidential Information may be or has been provided, and the terms of this agreement; and
- (b) Confidential Information does not include information which is in or becomes part of the public domain (other than through a breach of this agreement or an obligation of confidence) or which the recipient of the Confidential Information can prove was independently acquired or developed by it without breaching the terms of this agreement.

“**Conflict of Interest**” means any circumstances that exist or arise which:

- (a) constitute an actual conflict;
- (b) constitute a known risk of conflict; or
- (c) may be perceived by others to be a conflict, between the duties of Provider or its Personnel to Roads and Maritime and their duties to another person in relation to the activities under this agreement.

“**Control**” of a Provider includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of Provider; or
- (b) control the membership of the board of directors (or other governing body) of Provider,

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 of that Provider or otherwise.

“**Driver**” means an Authorised Escort Vehicle Driver listed as a driver in the Driver Roster in Schedule B of this agreement.

“**Driver Requirements**” has the meaning given in clause 4.1(b).

“**Driver Roster**” means Schedule B of this agreement as amended from time to time in accordance with this agreement.

“**Escort Vehicle**” has the same meaning as in the Heavy Vehicle National Law.

“**Escort Vehicle Services**” means the carrying out of the functions and responsibilities of an Authorised Driver of an Escort Vehicle for an OSOM Movement in accordance with the Heavy Vehicle National Law and the OSOM Operating Guidelines. These functions include the Authorised Escort Vehicle Driver giving reasonable directions, as appropriate, for the safe and efficient regulation of traffic as an authorised person under rule 304 of Road Rules 2014 NSW.

“**Health and Safety Incident**” means:

- (a) any incident in which a person’s health or safety is affected or put at risk including any member of the public, any personnel of the OSOM Operator, Roads and Maritime’ Personnel, any of the Provider’s Personnel, and personnel of the Police; and
- (b) any occupational health and safety related incident that is notifiable under the WHS Laws including any notifiable incident, serious injury or illness or dangerous incident under Part 3 of the *Work Health and Safety Act 2011*.

“**Heavy Vehicle National Law**” means

the Heavy Vehicle National Law (NSW) as applied by the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), any regulations made under that law and any associated permits, notices, conditions, exemptions, traffic management plans and other requirements issued by Roads and Maritime, the National Heavy Vehicle Regulator or any other government authority from time to time including:

- (a) the *Heavy Vehicle (Mass Dimension and Loading) National Regulation (NSW) 2014*;

- (b) the Class 1 Load Carrying Vehicles Notice 2014 (or any Notice subsequently published by the National Heavy Vehicle Regulator in the Commonwealth Gazette which replaces that Notice); and
- (c) the Class 1 Special Purpose Vehicles Notice 2014 (or any Notice subsequently published by the National Heavy Vehicle Regulator in the Commonwealth Gazette which replaces that Notice).

**"Insolvency Event"** means:

- (a) where Provider is an individual or partnership, Provider is declared bankrupt;
- (b) where Provider is a company:
  - (i) a liquidator has been appointed;
  - (ii) an administrator has been appointed (voluntarily or otherwise);
  - (iii) the appointment of a receiver or trustee in respect of any of Provider's property;
  - (iv) Provider enters into a scheme or other arrangement with its creditors;
  - (v) a winding-up order is made in respect of Provider;
  - (vi) a mortgagee of any property of Provider takes possession of that property;
  - (vii) Provider is unable to pay its debts as and when they fall due; or
  - (viii) Provider enters into any other form of insolvency administration.

**"Intellectual Property"** means all intellectual property rights including rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

**"Laws"** means all laws of any jurisdiction including rules of common law, equity, statutes, regulations, proclamations, rules, regulatory principles and requirements, by-laws, writs, orders and judgements, and all codes of conduct, industry standards, requirements and directives of any government or governmental body, agency or authority.

**"OSOM EVDS"** means the Oversize and/or Overmass Escort Vehicle Drivers Scheme as described in the OSOM Operating Guidelines.

**"OSOM Movement"** means movement of an OSOM Vehicle in NSW which is required to be accompanied by one or more Escort Vehicles under the Heavy Vehicle National Law (including under any permits issued under the Heavy Vehicle National Law).

**"OSOM Operating Guidelines"** means the requirements provided by Roads and Maritime from time to time, and as amended by notice from Roads and Maritime from time to time, for the OSOM EVDS including the requirements set out in the following documents as amended from time to time:

- (a) OSOM EVDS Operating Guidelines;
- (b) OSOM EVDS Code of Conduct for Accredited Providers and Authorised Escort Vehicle Drivers; and
- (c) all other guidelines and other material issued from time to time by Roads and Maritime relating to the OSOM EVDS.

If there is any inconsistency between the documents listed above, the document listed first above prevails unless Roads and Maritime directs otherwise.

**"OSOM Operator"** means the operator for an OSOM Movement under the Heavy Vehicle National Law.

**"OSOM Movement Records"** means the OSOM Movement Record forms required to be completed and retained under the OSOM Operating Guidelines.

“**OSOM Vehicle**” means a vehicle defined as a Class 1 heavy vehicle under the Heavy Vehicle National Law.

"**Personal Information**" has the same meaning in the Privacy Laws.

“**Personnel**” of a party means officers, employees, agents and contractors of that party, and in respect of Provider includes Drivers.

“**Privacy Laws**” means the *Privacy and Personal Information Protection Act 1998 (NSW)*, the *Privacy Act 1988 (Cth)*, any applicable codes of conduct or directions issued under the *Privacy and Personal Information Protection Act 1998 (NSW)* or the *Privacy Act 1988 (Cth)*, and all other applicable Laws relating to Personal Information.

“**Probity Event**” means an event, matter, situation or thing that in Roads and Maritime’ reasonable opinion:

- (a) has a material adverse effect upon the character, honesty or integrity of Provider, its Personnel or Roads and Maritime;
- (b) relates to Provider or any of its Personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of Roads and Maritime) or the reputation of or public confidence in Roads and Maritime or the New South Wales Government; or
- (c) that involves a material failure by Provider or its Personnel to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;
  - (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 Provider to impartially perform and observe its obligations in respect of this agreement; or
  - (iii) standards of behaviour expected of a person operating with a government approval.

"**Provider Representative**" means the person nominated in item 4 of the Agreement Details as they may be substituted pursuant to clause 6.3.

"**Records**" means the records that Provider is required to maintain under this agreement, the OSOM Operating Guidelines, the Heavy Vehicle National Law and Privacy Laws.

"**RMS Materials**" means any materials provided to Provider by Roads and Maritime for the purposes of the agreement, including any OSOM Operating Guidelines.

"**Term**" means the term of this agreement determined under clause 3.

“**WHS Laws**” means all applicable work health and safety related Laws including, but not limited to:

- (a) *Work Health and Safety Act 2011 (NSW)*;
- (b) regulations, codes of practice, Australian Standards or compliance codes; and
- (c) directions, guidance notes or notices issued by any relevant Government authority or agency responsible for administering work health and safety laws.

"**Working Day**" means a day that is not a Saturday, Sunday, public holiday in New South Wales, or a day during the Christmas closedown period published in the NSW Premier’s Memorandum.

## 21.2 Interpretation

In this agreement:

- (a) any term defined in the Heavy Vehicle National Law and not otherwise defined has the meaning given in the Heavy Vehicle National Law;
- (b) the singular includes the plural and vice versa;

- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
- (f) a recital, schedule, annexure or the description of the parties forms part of this agreement;
- (g) where an expression is defined, another part of speech or grammatical form has a corresponding meaning;
- (h) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time;
- (i) a reference to a statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it as at the date of the agreement and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (j) headings are for convenience of reference only and do not affect interpretation;
- (k) no provision of the agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the provision or the agreement; and
- (l) specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **21.3 Precedence of Documents**

- (a) If Provider considers there is any inconsistency between any requirement in the Agreement Details, Part 2 (Terms and Conditions) of this agreement, the OSOM Operating Guidelines or any other document comprising or referred to in this agreement:
- (b) Provider must notify Roads and Maritime of the alleged inconsistency;
- (c) RMS will, acting reasonably, direct Provider which document is to apply and the requirement Provider is to follow; and
- (d) Provider agrees to comply the reasonable directions of Roads and Maritime given under clause 21.3(c).

### **21.4 Multiple parties**

If more than one person is identified in item 1 of the Agreement Details as Provider:

- (a) an obligation of those persons is joint and several;
- (b) a right of Provider is held by each of those persons severally; and
- (c) any other reference to Provider is a reference to each of those persons separately, so that, for example:
  - (i) a representation, warranty or undertaking is given by each of them separately; and
  - (ii) a reference to Provider or that term for the purposes of an "Insolvency Event" is a reference to each of those persons separately.

**SCHEDULE A**

**INSURANCES  
(clause 12.1)**

**Contractor-Arranged Insurance Schedule**

<b>TYPES OF INSURANCES</b>	<b>MINIMUM SUM INSURED</b>	<b>PERIOD OF INSURANCE</b>	<b>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</b>	<b>QUALIFICATIONS</b>
Public Liability	\$20 million For any single occurrence	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	<ul style="list-style-type: none"> <li>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</li> <li>(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;</li> <li>(c) lists Roads and Maritime as an additional named insured; and</li> <li>(d) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below.</li> </ul>	If plant, equipment or the like are supplied to a customer for their use (i.e. as distinct from vehicles/equipment/plant etc. being operated by the OSOM service provider), Product Liability cover may also be required. Please contact your insurer. RMS will not be held liable for any supply of equipment by a Provider to a customer as any such transaction is outside the scope of the OSOM EVDS.
Motor Vehicle Comprehensive	\$20 million For any single occurrence	Annually for the duration of the contract.	<ul style="list-style-type: none"> <li>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</li> <li>(b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Escort Vehicle Services; and</li> <li>(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.</li> </ul>	



<b>Definitions &amp; Notes</b>	
1	<p>Approved Insurer means</p> <ul style="list-style-type: none"> <li>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</li> <li>(b) Lloyds Underwriters;</li> <li>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</li> <li>(d) The Comcover insurance scheme for the Australian Federal Government.</li> </ul> <p>Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a ‘fronting’ placement is acceptable from an insurer listed in Note 1(a) or 1(b).</p>
2	<p>Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.</p>
3	<p>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.</p>
4	<p>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 (e.g. “Provider” and “Agreement” or as the case may be). References to Roads and Maritime mean Roads and Maritime.</p>

**SCHEDULE B**

**DRIVER ROSTER**

**PROVIDER DETAILS**

<b>Company name</b>	
<b>Trading name</b>	
<b>ABN</b>	
<b>Address</b>	
<b>Phone</b>	
<b>Email</b>	

**DRIVER DETAILS**

<b>First name</b>	<b>Last name</b>	<b>Address</b>	<b>Phone</b>	<b>Driver Licence No.</b>	<b>State of issue</b>	<b>EVD Authorisation No.</b>	<b>Relationship</b>	<b>Start date (with Provider)</b>	<b>End date</b>
John	Citizen	2 Smith St Sydney NSW 2000	0410xxxxxx	1234AB	NSW	EVDS12345	Employee	1 October 2017	Current
Jane	Citizen	2 Smith St Sydney NSW 2000	0412xxxxxx	2345BC	NSW	EVDS12346	Contractor	2 July 2017	30 October 2017

N.B Each time a Driver recommences employment or a new contract with the Provider please record as a new entry on the Roster